ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 2008
First Extraordinary Session, 2008
Second Extraordinary Session, 2008
Second Extraordinary Session, 2007

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**Clerk:** Gregory M. Gray, Charleston  
**Sergeant at Arms:** Oce Smith, Fairmont  
**Doorkeeper:** John Roberts, Hedgesville

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1 Appointed to fill the vacancy created by the resignation of Ron Thompson.
2 Appointed to fill the vacancy created by the resignation of Jon Amores.

(D) Democrats .......... 72
(R) Republicans ......... 28

TOTAL .................. 100

[XXIV]
MEMBERS OF THE SENATE

REGULAR SESSION, 2008

OFFICERS

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

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<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
<td>66th - 78th</td>
</tr>
<tr>
<td></td>
<td>John Pat Fanning (D)</td>
<td>Laeger</td>
<td>58th - 64th, 67th - 68th; 73rd - 78th</td>
</tr>
<tr>
<td>Seventh</td>
<td>Earl Ray Tomblin (D)</td>
<td>Chapmanville</td>
<td>(House 62nd - 64th); 65th - 78th</td>
</tr>
<tr>
<td></td>
<td>Ron Stollings (D)</td>
<td>Madison</td>
<td>78th</td>
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<tr>
<td>Eighth</td>
<td>Vic Sprouse (R)</td>
<td>South Charleston</td>
<td>(House 72nd); 73rd - 78th</td>
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<tr>
<td>Ninth</td>
<td>Erik F. Wells (D)</td>
<td>Charleston</td>
<td>78th</td>
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<tr>
<td></td>
<td>Billy Wayne Bailey, Jr. (D)</td>
<td>Pineville</td>
<td>Appt. 1/91, 70th; 71st - 78th</td>
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<tr>
<td></td>
<td>Mike Green (D)</td>
<td>Daniels</td>
<td>78th</td>
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<tr>
<td>Tenth</td>
<td>Donald T. Caruth (R)</td>
<td>Mercer</td>
<td>(House 76th) 77th - 78th</td>
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<td></td>
<td>Jesse O. Guills (R)</td>
<td>Lewisburg</td>
<td>76th - 78th</td>
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<tr>
<td>Eleventh</td>
<td>Shirley Love (D)</td>
<td>Oak Hill</td>
<td>72nd - 78th</td>
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<td></td>
<td>C. Randy White (D)</td>
<td>Webster Springs</td>
<td>(House 73rd - 75th); 76th - 78th</td>
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<tr>
<td>Twelfth</td>
<td>Joseph M. Minard (D)</td>
<td>Clarksburg</td>
<td>(House Appt. 1/83, 66th; 67th - 69th; 70th, 74th - 78th</td>
</tr>
<tr>
<td></td>
<td>William R. Sharpe, Jr. (D)</td>
<td>Weston</td>
<td>55th - 64th, 67th - 78th</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>Michael A. Oliverio, II (D)</td>
<td>Morgantown</td>
<td>(House 71st); 72nd - 78th</td>
</tr>
<tr>
<td></td>
<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont</td>
<td>(House 69th - 72nd); 73rd - 78th</td>
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<tr>
<td>Fourteenth</td>
<td>Jon Blair Hunter (D)</td>
<td>Clarksburg</td>
<td>73rd - 78th</td>
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<td>Dave Sypolt (R)</td>
<td>Kingwood</td>
<td>78th</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>Walt Helmick (D)</td>
<td>Marlinton</td>
<td>(House 1 yr., 69th); Appt. 9/89, 69th, 70th - 78th</td>
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<tr>
<td>Sixteenth</td>
<td>Clark Barnes (R)</td>
<td>Randolph</td>
<td>77th - 78th</td>
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<td></td>
<td>John Yoder (R)</td>
<td>Harpers Ferry</td>
<td>71st - 72nd, 77th - 78th</td>
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<tr>
<td></td>
<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>74th - 78th</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>74th - 78th</td>
</tr>
<tr>
<td></td>
<td>Dan Foster (D)</td>
<td>Charleston</td>
<td>(House 76th) 77th - 78th</td>
</tr>
</tbody>
</table>

(D) Democrats .................................. 23
(R) Republicans .................................. 11

TOTAL ........................................... 34
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2008

STANDING

AGRICULTURE AND NATURAL RESOURCES
Stemple (Agriculture Chair), Tabb (Agriculture Vice Chair),
Talbott (Natural Resources Chair), Argento (Natural Resources Vice Chair), Barker, Caputo, Crosier, Eldridge, Ellis, Fragale,
Martin, Moore, Moye, Paxton, Rodigherio, Shaver, Varner, Wells,
Hamilton, Anderson, Canterbury, Evans, Ireland, C. Miller and
Romine.

BANKING AND INSURANCE
Moore (Banking Chair), Perry (Banking Vice Chair), Kominar
(Insurance Chair), Barker (Insurance Vice Chair), Beach, Ellis,
Guthrie, Hartman, Higgins, Hutchins, Iaquinta, Kessler, Mahan,
Michael, Miley, Reynolds, Talbott, Williams, Andes, Ashley,
Azinger, Border, Carmichael, Schoen and Walters.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Hutchins (Vice Chair), Brown, Campbell,
Caputo, Doyle, Guthrie, Hatfield, Higgins, Kominar, Long,
Marshall, Morgan, Palumbo, Pino, Staggers, Wells, Webster,
Anderson, Blair, Ellem, Lane, J. Miller, Overington and Sobonya.

EDUCATION
M. Poling (Chair), Paxton (Vice Chair), Browning, Craig,
Crosier, Ellis, Ennis, Fragale, Frederick, Gall, Moye, Perry, Pethtel,
Rodigherio, Shaver, Stephens, Wells, Wysong, Duke, Ireland, J.
Miller, Romine, Rowan, Sumner and Tansill.

FINANCE
White (Chair), Boggs (Vice Chair), Barker, Campbell, Craig,
Doyle, Iaquinta, Klempa, Kominar, Manchin, Marshall, Perdue, M.
Poling, Reynolds, Spencer, Stalnaker, Tucker, Yost, Anderson,
Ashley, Blair, Border, Carmichael, Evans and Walters.
HOUSE OF DELEGATES COMMITTEES

GOVERNMENT ORGANIZATION
Morgan (Chair), Martin (Vice Chair), Argento, Beach, Caputo, Cann, DeLong, Eldridge, Hartman, Hatfield, Higgins, Hutchins, Michael, Palumbo, D. Poling, Staggers, Swartzmiller, Talbott, Andes, Canterbury, Cowles, C. Miller, Porter, Rowan and Schoen.

HEALTH AND HUMAN RESOURCES
Perdue (Chair), Hatfield (Vice Chair), Boggs, Campbell, Cann, Eldridge, Fleischauer, Long, Longstreth, Marshall, Moore, Moye, Pino, Rodigherio, Staggers, Stalnaker, Spencer, Wysong, Ashley, Border, Canterbury, Lane, J. Miller, Rowan and Sumner.

INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

JUDICIARY
Webster (Chair), Proudfoot (Vice Chair), Brown, Burdiss, Fleischauer, Guthrie, Hrutkay, Kessler, Long, Longstreth, Mahan, Miley, Moore, Pino, Shook, Stemple, Tabb, Varner, Azinger, Ellem, Hamilton, Lane, Overington, Schadler and Sobonya.

PENSIONS AND RETIREMENT
Spencer (Chair), Craig (Vice Chair), Browning, Stemple, Stephens, Canterbury and Duke.

POLITICAL SUBDIVISION
Manchin (Chair), Yost (Vice Chair), Beach, Browning, Craig, Doyle, Gall, Kominar, Miley, Palumbo, Perry, D. Poling, Proudfoot, Reynolds, Swartzmiller, Tabb, Varner, Wysong, Cowles, Duke, Rowan, Schadler, Schoen, Sumner and Tansill.

[XXVII]
HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION
Hrutkay (Chair), Stephens (Vice Chair), Argento, Boggs, Burdiss, Crosier, Ennis, Klempa, Manchin, Martin, Michael, Pethel, Pino, Proudfoot, Shook, Stalnaker, Wells, Wysong, Duke, Ellem, Evans, Porter, Romine, Schadler and Tansill.

RULES

VETERANS AFFAIRS AND HOMELAND SECURITY
Iaquinta (Veterans Affairs Chair), Longstreth (Veterans Affairs Vice Chair), Swartzmiller (Homeland Security Chair), Ennis (Homeland Security Vice Chair), Burdiss, Cann, Hatfield, Hrutkay, Hutchins, Paxton, Pethel, Shaver, Shook, Staggers, Stephens, Tucker, Williams, Yost, Armstead, Azinger, Ireland, Porter, Sumner, Tansill and Walters.

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JOINT COMMITTEES

ENROLLED BILLS
Doyle (Chair), Beach (Vice Chair) and Fragale.

GOVERNMENT AND FINANCE
Richard Thompson (Co-Chair), Caputo, DeLong, Webster, White and Armstead.

LEGISLATIVE RULE-MAKING REVIEW
Brown (Chair), Miley (Vice Chair), Burdiss, Talbott, Overington and Sobonya.

[XXVIII]
HOUSE OF DELEGATES COMMITTEES

STATUTORY LEGISLATIVE COMMISSIONS

INTERSTATE COOPERATION
Pino (Chair), Frederick (Vice Chair), Blair and Walters.

COMMISSION ON SPECIAL INVESTIGATIONS
Richard Thompson (Co-Chair), DeLong, White, Armstead and Ellem.
COMMITTEES OF THE SENATE  
Regular Session, 2008  

STANDING  

AGRICULTURE AND NATURAL RESOURCES  
Edgell (Chair), Love (Vice Chair), Bailey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Sypolt.  

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

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

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

EDUCATION  
Plymale (Chair), Edgell (Vice Chair), Bailey, Green, Hunter, Oliverio, Stollings, Unger, Wells, White, Boley, Guills, Hall and Sprouse.  

ENERGY, INDUSTRY AND MINING  
Sharpe (Chair), Hunter (Vice Chair), Fanning, Green, Helmick, Jenkins, Kessler, Stollings, Wells, Deem, Guills, Sprouse and Sypolt.  

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

[XXX]
SENATE COMMITTEES

GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Foster, Jenkins, Kessler, McCabe, Minard, Plymale, Stollings, White, Barnes, Boley, Sypolt and Yoder.

HEALTH AND HUMAN RESOURCES
Prezioso (Chair), Stollings (Vice Chair), Bailey, Foster, Green, Hunter, Jenkins, McCabe, Sharpe, Boley, Guills, Hall and Sprouse.

INTERSTATE COOPERATION
Jenkins (Chair), Foster (Vice Chair), Minard, Stollings, Wells, Caruth and Sypolt.

JUDICIARY
Kessler (Chair), Oliverio (Vice Chair), Chafin, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder.

LABOR
Oliverio (Chair), Green (Vice Chair), Edgell, Foster, Love, Prezioso, Wells, White, Barnes, Deem and Yoder.

MILITARY
Hunter (Chair), Wells (Vice Chair), Bailey, Edgell, Minard, Oliverio, Boley, Hall and Sypolt.

NATURAL RESOURCES
Fanning (Chair), White (Vice Chair), Bowman, Green, Helmick, Love, McCabe, Prezioso, Unger, Barnes, Deem, Facemyer and McKenzie.

PENSIONS
Foster (Chair), McCabe (Vice Chair), Edgell, Oliverio, Plymale, Deem and Hall.

[XXXI]
SENATE COMMITTEES

RULES
Tomblin (Chair), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, McKenzie, Boley and Caruth.

TRANSPORTATION AND INFRASTRUCTURE
Unger (Chair), Jenkins (Vice Chair), Fanning, Love, Stollings, White, Barnes, Facemyer and McKenzie.

JOINT COMMITTEES

ENROLLED BILLS
White (Co-Chair), Green, Love, Sprouse and Yoder.

GOVERNMENT AND FINANCE
Tomblin (Co-Chair), Chafin, Helmick, Kessler, Sharpe, Caruth and Deem.

LEGISLATIVE RULE-MAKING REVIEW
Minard (Chair), Fanning (Vice Chair), Prezioso, Unger, Boley and Facemyer.
AN ACT to amend and reenact §33-6-5a of the Code of West Virginia, 1931, as amended, relating to application requirements for life and accident and sickness insurance and permitting internet sales of and applications for life and accident and sickness insurance.

Be it enacted by the Legislature of West Virginia:

That §33-6-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-5a. Application for life or accident and sickness insurance; signatures required; exemptions; right of insured to return policy.

1 (a) All applications for life or accident and sickness insurance, as defined in section ten, article one of this chapter, to be issued in this state shall:

4 (1) If application is made by the proposed insured, include the signature of both the proposed insured and the agent;
(2) If application is made by the proposed insured, be completed by a licensed and appointed agent in the presence of the proposed insured;

(3) If application is made by a spouse upon the other spouse, include the signature of the spouse procuring the insurance and the agent; or

(4) If application is made by any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, include the signature of the person procuring the insurance and the agent.

(b) Upon the hand delivery of a policy of life or accident and sickness insurance, a delivery receipt shall be signed and dated by the insured and returned to the insurer for filing.

If the delivery of a policy of life or accident and sickness insurance is by mail, it shall either: (1) Be sent by certified mail from the insurer, return receipt requested, and the date of receipt noted on the receipt is the date of receipt for the purposes of section eleven-b of this article; or (2) the insurer shall prepare a certificate of mailing. For the purposes of this section, a certificate of mailing means a record prepared and retained in accordance with general business practices indicating the date that the policy was mailed to the insured and it is presumed that the policy was received by the insured twenty days from the date of mailing.

(c) Any amendments to the application after it is originally signed by the proposed insured shall be expressly disclosed in writing to the proposed insured and his or her signature is obtained to verify agreement with the changes: Provided, That the failure of the insurer to notify the insured of any change, or the failure of the insured to execute the
signature, does not invalidate the existence of insurance coverage.

(d) The following shall be exempt from the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section:

(1) Group life or group accident and sickness insurance applications if the insurer accepts all prospective principal insureds with no underwriting restrictions on the individual proposed insureds;

(2) Group life or group accident and sickness insurance applications if there is underwriting as to the individual proposed insureds and the applications are completed without a licensed and appointed agent present, but the insurer verifies the information on the application by telephone with the proposed insured;

(3) Applications for life or accident and sickness insurance if the insurance is solely mass marketed and the only contact with the insured is by mail, mass media or telephone; and

(4) Applications for life or accident and sickness insurance if the insurer is an underwriter for supplemental retirement plans and additional retirement plans provided to eligible employees of the governing boards of state institutions of higher education pursuant to the provisions of section four-a, article twenty-three, chapter eighteen of this code.

(e) The taking of an application for life or accident and sickness insurance and otherwise completing a transaction electronically is exempt from the requirements of subdivision (2), subsection (a) of this section.
AN ACT to amend and reenact §33-12-8 of the Code of West Virginia, 1931, as amended, relating to continuing education for individual insurance producers; allowing continuing education credit for active annual membership in professional organizations or associations; and providing for carry-over of hours of continuing education into the following biennial reporting period.

Be it enacted by the Legislature of West Virginia:

That §33-12-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-8. Continuing education required.

1 The purpose of this provision is to provide continuing education under guidelines set up under the Insurance Commissioner's office, with the guidelines to be set up under the Board of Insurance Agent Education.

(a) This section applies to individual insurance producers licensed to engage in the sale of the following types of insurance:
(1) Life. -- Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

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

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

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

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

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

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

(b) This section does not apply to:

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

(2) Individual insurance producers selling credit life or credit accident and health insurance.
(c) (1) The Board of Insurance Agent Education as established by section seven of this article shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before the thirty-first day of December of each year. No program may be approved by the commissioner that includes a requirement that any individual insurance producer complete more than twenty-four hours of continuing insurance education biennially. No program may be approved by the commissioner that includes a requirement that any of the following individual insurance producers complete more than six hours of continuing insurance education biennially:

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

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

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

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents' association, insurance trade association or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(d) Individual insurance producers licensed to sell insurance and who are not otherwise exempt shall
satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

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

(f) Subject to the approval by the commissioner, the active annual membership by an individual insurance producer in an organization or association recognized and approved by the commissioner as a state, regional or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: Provided, That not more than two hours of continuing insurance education may be awarded to an individual insurance producer for membership in a professional insurance organization during a biennial reporting period. Credit for continuing insurance education pursuant to this subdivision may only be awarded to individual insurance producers who are required to complete more than six hours of continuing education biennially.

(g) Individual insurance producers who are required to complete more than six hours of continuing education biennially and who exceed the minimum continuing education requirement for the biennial reporting period may carry-over a maximum of six credit hours only into the next reporting period.

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

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

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

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

CHAPTER 124

(Com. Sub. for S.B. 704 - By Senator Minard)

[Passed February 29, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-13C-1, §33-13C-2, §33-13C-3, §33-13C-4, §33-13C-5, §33-13C-6, §33-13C-7, §33-13C-8, §33-13C-9, §33-13C-10, §33-13C-11, §33-13C-12, §33-13C-13, §33-13C-14, §33-13C-15, §33-13C-16, §33-13C-17 and §33-13C-18, all relating to viatical settlements of life insurance policies between life insurance policyholders and third parties; providing for licensing of viatical settlement providers and brokers; requiring payment of fees; authorizing proposal of and promulgation of rules, including emergency rules; and providing civil and criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-13C-1, §33-13C-2, §33-13C-3, §33-13C-4, §33-13C-5, §33-13C-6, §33-13C-7, §33-13C-8, §33-13C-9, §33-13C-10, §33-13C-11, §33-13C-12, §33-
13C-13, §33-13C-14, §33-13C-15, §33-13C-16, §33-13C-17 and §33-13C-18, all to read as follows:

ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

§33-13C-1. Short title.

§33-13C-2. Definitions.

§33-13C-3. License and bond requirements.

§33-13C-4. License revocation and denial.

§33-13C-5. Approval of viatical settlement contracts and disclosure statements.

§33-13C-6. Reporting requirements and privacy.

§33-13C-7. Examination or investigation.


§33-13C-12. Prohibited practices and conflicts of interest.


§33-13C-14. Fraud prevention and control.

§33-13C-15. Injunctions; civil remedies; cease and desist.

§33-13C-16. Criminal penalties.

§33-13C-17. Authority to promulgate rules.

§33-13C-18. No preemption of securities laws.

§33-13C-1. Short title.

1 This article may be cited as the “Viatical Settlements Act”.

§33-13C-2. Definitions.

1 As used in this article:

2 (1) “Advertising” means any written, electronic or printed
3 communication or any communication by means of recorded
4 telephone messages or transmitted on radio, television, the
5 internet or similar communications media, including film
6 strips, motion pictures and videos, published, disseminated,
7 circulated or placed, directly or indirectly, before the public
8 in this state for the purpose of creating an interest in or
9 inducing a person to sell, assign, devise, bequest or transfer
the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

(2) “Business of viatical settlements” means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract.

(3) “Chronically ill” means having been certified within the preceding twelve-month period by a licensed health professional as:

(A) Being unable to perform, without substantial assistance from another individual, at least two of the following activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing or continence due to a loss of functional capacity;

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(C) Having a level of disability similar to that described in paragraph (A) of this subdivision as determined under regulations prescribed by the United States Secretary of the Treasury in consultation with the United States Secretary of Health and Human Services.

(4) “Financing entity” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose principal activity related to the transaction is
providing funds to effect the viatical settlement or purchase of one or more viatcated policies and who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. “Financing entity” does not include a nonaccredited investor or a viatical settlement purchaser.

(5) “Fraudulent viatical settlement act” includes:

(A) Acts or omissions committed by any person who knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including:

(i) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer or any other person, false material information or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

(I) An application for the issuance of a viatical settlement contract or insurance policy;

(II) The underwriting of a viatical settlement contract or insurance policy;

(III) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(IV) Premiums paid on an insurance policy;

(V) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
(VI) The reinstatement or conversion of an insurance policy;

(VII) In the solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy;

(VIII) The issuance of written evidence of viatical settlement contract or insurance; or

(IX) A financing transaction; and

(ii) Employing any plan, financial structure, device, scheme or artifice to defraud related to viaticated policies;

(B) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(i) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(ii) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;

(iii) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or

(iv) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner;

(C) Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a
viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlements or insurance;

(D) Recklessly entering into, negotiating, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy’s issuer, the viatical settlement provider or the viator;

(E) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this article for the express purposes of evading or avoiding the provisions of this article;

(F) Issuing, soliciting, marketing or otherwise promoting stranger-originated life insurance; or

(G) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

(6) “Life insurance producer” means any person licensed in accordance with the provisions of article twelve of this chapter as a resident or nonresident insurance producer who has received qualification or authority for a license in the life insurance coverage line of authority.

(7) “Person” means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust or corporation.
(8) “Policy” means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(9) “Related provider trust” means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

(10) “Special purpose entity” means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access, either directly or indirectly, to institutional capital markets for a financing entity or licensed viatical settlement provider or in connection with a transaction in which the securities in the special purpose entity are acquired by qualified institutional buyers.

(11) “Terminally ill” means certified by a physician as having an illness or physical condition that can reasonably be anticipated to result in death in twenty-four months or less.

(12) “Viatical settlement broker” means a person who, working exclusively on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or
more viatical settlement brokers. Notwithstanding the manner
in which the viatical settlement broker is compensated, a
viatical settlement broker is deemed to represent only the
viator, and not the insurer or the viatical settlement provider,
and owes a fiduciary duty to the viator to act according to the
viator’s instructions and in the best interest of the viator. The
term does not include an attorney, certified public accountant
or a financial planner accredited by a nationally recognized
accreditation agency, who is retained to represent the viator
and whose compensation is not paid directly or indirectly by
the viatical settlement provider or purchaser, provided that
the viatical settlement activities are incidental to the
professional practice of the attorney, certified public
accountant or financial planner.

(13) “Viatical settlement contract” means any of the
following:

(A) A written agreement between a viator and a viatical
settlement provider or any affiliate of the viatical settlement
provider establishing the terms under which compensation or
anything of value is or will be paid, which compensation or
value is less than the expected death benefits of the policy, in
return for the viator’s present or future assignment, transfer,
sale, devise or bequest of the death benefit or ownership of
any portion of the insurance policy or certificate of insurance;

(B) A premium finance loan made for a life insurance
policy by a lender to a viator on, before or after the date of
issuance of the policy in either of the following situations:

(i) The viator or the insured receives a guarantee of a
future viatical settlement value of the policy; or

(ii) The viator or the insured agrees to sell the policy or
any portion of its death benefit on any date following the
issuance of the policy.
(C) The transfer or acquisition for compensation or anything of value for ownership or beneficial interest in a trust or other person that owns such a policy if the trust or other person was formed or availed of for the principal purpose of acquiring one or more life insurance policies.

(D) "Viatical settlement contract" does not include any of the following unless part of a plan, scheme, device or artifice to avoid the application of this article:

(i) A policy loan or accelerated death benefit made by the insurer pursuant to the policy’s terms;

(ii) Loan proceeds that are used solely to pay premiums for the policy and the costs of the loan, including interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(iii) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this article;

(iv) An agreement where all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured or are trusts established primarily for the benefit of such parties;

(v) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the
purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vi) Any of the following business succession planning arrangements if those arrangements are bona fide arrangements:

(I) An arrangement between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(II) An arrangement between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(III) An arrangement between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(vii) An agreement entered into by a service recipient, or a trust established by the service recipient and a service provider, or a trust established by the service provider who performs significant services for the service recipient’s trade or business; or

(viii) Any other contract, transaction or arrangement exempted from the definition of a viatical settlement contract by the commissioner based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this article.

(14)(A) “Viatical settlement provider” means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.
“Viatical settlement provider” does not include:

(i) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(ii) The issuer of the life insurance policy;

(iii) An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity or related provider trust;

(iv) An individual who enters into or effectuates no more than one viatical settlement contract in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(v) A financing entity;

(vi) A special purpose entity;

(vii) A related provider trust;

(viii) A viatical settlement purchaser; or

(ix) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

“Viatical settlement purchaser” means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance
policy that has been or will be the subject of a viatical
settlement contract, for the purpose of deriving an economic
benefit.

(B) “Viatical settlement purchaser” does not include:

(i) A licensee under this article;

(ii) An accredited investor or qualified institution buyer
as defined in, respectively, Rule 501(a) or Rule 144A
promulgated under the Federal Securities Act of 1933, as
amended;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

(16) “Viaticated policy” means a life insurance policy or
certificate that has been acquired by a viatical settlement
provider pursuant to a viatical settlement contract.

(17)(A) “Viator” means the owner of a life insurance
policy or a certificate holder under a group policy who
resides in this state and enters or seeks to enter into a viatical
settlement contract. For the purposes of this article, a viator
shall not be limited to an owner of a life insurance policy or
a certificate holder under a group policy insuring the life of
an individual with a terminal or chronic illness or condition
except where specifically addressed. If there is more than
one viator on a single policy and the viators are residents of
different states, the transaction shall be governed by the law
of the state in which the viator having the largest percentage
ownership resides or, if the viators hold equal ownership, the
state of residence of one viator agreed upon in writing by all
the viators.
(B) “Viator” does not include:

(i) A licensee under this article, including a life insurance producer acting as a viatical settlement broker pursuant to this article;

(ii) Qualified institution buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

(18) “Stranger-originated life insurance” or “STOLI” means a plan or agreement that provides for both of the following at the time of the origination of a life insurance policy.

(A) The purchase of a life insurance policy by an applicant primarily for the benefit of a third-party investor that lacks insurable interest in the insured person; and

(B) The subsequent accrual, directly or indirectly, to that third-party investor of the legal or beneficial ownership of the policy or the benefits of the policy.

§33-13C-3. License and bond requirements.

1 (a) (1) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner.

(2) (A) An insurance producer who is authorized to sell life insurance in this state pursuant to a resident or nonresident license issued in accordance with the provisions
of article twelve of this chapter may operate as a viatical
settlement broker without obtaining a license pursuant to this
section if the viatical settlement activities of the producer are
incidental to the producer’s insurance business activities.

(B) The insurer that issued the policy being viaticated
shall not be responsible for any act or omission of a viatical
settlement broker or viatical settlement provider arising out
of or in connection with the viatical settlement transaction,
unless the insurer receives compensation for the placement of
a viatical settlement contract from the viatical settlement
provider or viatical settlement broker in connection with the
viatical settlement contract.

(3) A person licensed as an attorney, certified public
accountant or financial planner accredited by a nationally
recognized accreditation agency, who is retained to represent
the viator, whose compensation is not paid directly or
indirectly by the viatical settlement provider, may negotiate
viatical settlement contracts on behalf of the viator without
having to obtain a license as a viatical settlement broker.

(b) Application for a viatical settlement provider or
viatical settlement broker license and for renewals of such
licenses shall be made in the manner prescribed by the
commissioner and shall be accompanied by fees established
in legislative rules, including emergency rules, promulgated
by the commissioner.

(c) The commissioner shall have authority, at any time,
to require the applicant to fully disclose the identity of all
stockholders, partners, officers, members and employees, and
the commissioner may, in the exercise of the commissioner’s
discretion, refuse to issue a license in the name of a legal
entity if not satisfied that any officer, employee, stockholder,
partner or member thereof who may materially influence the
applicant’s conduct meets the standards of this article.
(d) The commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(1) If a viatical settlement provider, has provided a detailed plan of operation;

(2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;

(4) Has demonstrated evidence of financial responsibility in a format prescribed by the commissioner by possessing a minimum equity of not less than two hundred fifty thousand dollars in cash or cash equivalents reflected in the applicant’s audited financial statements or through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount of two hundred fifty thousand dollars: Provided, That the commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with a state in which the applicant is licensed as a viatical settlement provider or viatical settlement broker. Any surety bond issued pursuant to this subdivision shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the viatical settlement provider or viatical settlement broker. The commissioner may ask for evidence of financial responsibility at any time he or she deems necessary.

(5) If a legal entity, has provided a certificate of good standing from the state of its domicile; and
73 (6) Has provided an antifraud plan that meets the requirements of subsection (g), section fourteen of this article.

76 (e) The commissioner shall not issue a license to a nonresident applicant unless the applicant files with the commissioner either a written designation of an agent for service of process or the applicant’s written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

83 (f) A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten percent or more stockholders, partners, directors, members or designated employees within thirty days of the change.

88 (g) An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen hours of training related to viatical settlements and viatical settlement transactions, as required by the commissioner. A life insurance producer operating as a viatical settlement broker pursuant to subdivision (2), subsection (a) of this section shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

§33-13C-4. License revocation and denial.

1 (a) The commissioner may refuse to issue, suspend, revoke, place on probation or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

5 (1) There was any material misrepresentation in the application for the license;
(2) The licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(4) The licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(5) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this article;

(6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(7) The licensee no longer meets the requirements for initial licensure;

(8) The viatical settlement provider has assigned, transferred or pledged a viated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity or related provider trust; or

(9) The licensee or any officer, partner, member or key management personnel has violated any provision of this article.
(b) The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to this article if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of this article or has otherwise engaged in bad faith conduct with one or more viators.

(c) If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider, viatical settlement broker or life insurance producer operating as a viatical settlement broker, the commissioner shall conduct a hearing in accordance with section thirteen, article two of this chapter.

§33-13C-5. Approval of viatical settlement contracts and disclosure statements.

(a) A person shall not use a viatical settlement contract form or provide a disclosure statement form to a viator in this state unless it has been filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form, disclosure statement form or any provision contained therein if, in the commissioner’s opinion, the contract, disclosure form or any provision contained therein fail to meet the requirements of section eight, ten, thirteen or fourteen of this article, is unreasonable, is contrary to the interests of the public or is otherwise misleading or unfair to the viator. At the commissioner’s discretion, the commissioner may require the submission of advertising material.

(b) Forms required to be filed are subject to the provisions of section eight, article six of this chapter and shall be deemed “forms for noncommercial insurance”. The commissioner shall establish fees for form filings by rule, including emergency rule.
§33-13C-6. Reporting requirements and privacy.

(a) On or before the first day of March of each year, each viatical settlement provider shall file with the commissioner an annual statement containing such information as the commissioner may prescribe. The information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial and health information of the viator or insured shall be filed with the commissioner on a confidential basis.

(b) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company or any other person with actual knowledge of an insured’s identity, shall not disclose that identity as an insured, or the insured’s financial or medical information to any other person unless the disclosure:

1. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

2. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of subsection (c), section fourteen of this article;

3. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

4. Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the
viator and insured have provided prior written consent to the
disclosure;

(5) Is necessary to allow the viatical settlement provider
or viatical settlement broker or their authorized representative
to make contacts for the purpose of determining health status;
or

(6) Is required to purchase stop loss coverage or financial
guaranty insurance.

§33-13C-7. Examination or investigation.

(a) (1) The commissioner may conduct an examination
under this article of a licensee as often as he or she deems
appropriate after considering such matters as consumer
complaints, results of financial statement analyses and ratios,
changes in management or ownership, actuarial opinions,
report of independent certified public accountants and other
relevant criteria as determined by the commissioner.

(2) For purposes of completing an examination of a
licensee under this article, the commissioner may examine or
investigate any person, or the business of any person, in so
far as the examination or investigation is, in the sole
discretion of the commissioner, necessary or material to the
examination of the licensee.

(3) In lieu of an examination under this article of any
foreign or alien licensee licensed in this state, the
commissioner may, at the commissioner's discretion, accept
an examination report on the licensee as prepared by the
commissioner for the licensee's state of domicile or port-of-
entry state; as far as practical, the examination of a foreign or
alien licensee shall be made in cooperation with the insurance
supervisory officials of other states in which the licensee
transacts business.
(b) (1) A person required to be licensed by this article shall for five years retain copies of all records and documents related to the requirements of this article, including, but not limited to, proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later; and all checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction: Provided, That this subsection does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.

(2) Records required to be retained by this section shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(c) (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners Handbook adopted by the National Association of Insurance Commissioners (NAIC). The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings
relating to the property, assets, business and affairs of the
licensee being examined. The officers, directors, employees
and agents of the licensee or person shall facilitate the
examination and aid in the examination so far as it is in their
power to do so. The refusal of a licensee, by its officers,
directors, employees or agents, to submit to examination or
to comply with any reasonable written request of the
commissioner shall be grounds for suspension or refusal of,
or nonrenewal of any license or authority held by the licensee
to engage in the viatical settlement business or other business
subject to the commissioner's jurisdiction. Any proceedings
for suspension, revocation or refusal of any license or
authority shall be conducted pursuant to section eleven,
article two of this chapter.

(3) The commissioner shall have the power to issue
subpoenas, to administer oaths and to examine under oath
any person as to any matter pertinent to the examination.
Upon the failure or refusal of a person to obey a subpoena,
the commissioner may petition a court of competent
jurisdiction and, upon proper showing, the court may enter an
order compelling the witness to appear and testify or produce
documentary evidence. Failure to obey the court order is
punishable as contempt of court.

(4) When making an examination under this article, the
commissioner may retain attorneys, appraisers, independent
actuaries, independent certified public accountants or other
professionals and specialists as examiners, the reasonable
cost of which shall be borne by the licensee that is the subject
of the examination.

(5) Nothing contained in this article shall be construed to
limit the commissioner's authority to terminate or suspend an
examination in order to pursue other legal or regulatory
action pursuant to the insurance laws of this state. Findings
of fact and conclusions made pursuant to any examination
shall be prima facie evidence in any legal or regulatory action.

(6) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(7) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

(d) (1) Names and individual identification data for all viators is considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

(2) Except as otherwise provided in this article, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this article, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee is confidential by law and privileged, is not subject to the public disclosure provisions of article one, chapter twenty-nine-b of this code, is not subject to subpoena and is not subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
(3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries is confidential by law and privileged, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this article, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) Disclosed to the NAIC and its affiliates and subsidiaries under subdivision (5) of this subsection by a commissioner.

(4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to subdivision (1) of this subsection.

(5) In order to assist in the performance of the commissioner's duties, the commissioner:

(A) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision (1) of this subsection, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;
(B) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the jurisdiction that is the source of the document, material or information; and

(C) May enter into agreements governing sharing and use of information consistent with this subsection.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (5) of this subsection.

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(8) Nothing contained in this article shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law-enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this article.

(e) (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly,
has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this article. This section shall not be construed to automatically preclude an examiner from being:

(A) A viator;

(B) An insured in a viated insurance policy; or

(C) A beneficiary in an insurance policy that is proposed to be viated.

(2) Notwithstanding the requirements of this clause, the commissioner may retain, from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may, from time to time, be similarly employed or retained by persons subject to examination under this article.

(f) (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this article.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this article, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.

(a) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

(1) That there are possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator’s life insurance policy.

(2) That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator’s instructions and in the best interest of the viator.
18 (3) That some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

22 (4) That proceeds of the viatical settlement could be subject to the claims of creditors.

24 (5) That receipt of the proceeds of a viatical settlement may adversely affect the viator’s eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

28 (6) The viator has the right to rescind a viatical settlement contract by providing notice of rescission and repaying all viatical settlement proceeds paid to the viator pursuant to the escrow agreement by the earlier of sixty calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been paid to the viator, as provided in subsection (e), section ten of this article. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator’s estate of all viatical settlement proceeds to the viatical settlement provider within sixty days of the insured’s death.

47 (8) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy
or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser.

(9) Disclosure to a viator shall include distribution of a brochure prescribed by the commissioner describing the process of viatical settlements.

(10) The disclosure document shall contain the following language: “All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured’s identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.”

(11) That following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured’s health status and to confirm the insured’s residential or business street address and telephone number or as otherwise provided in this article. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and not more than once per month if the insured has a life expectancy of one year or less. All such contracts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

(b) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date
the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(1) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

(2) The document shall include the name, business address and telephone number of the viatical settlement provider;

(3) Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;

(4) If an insurance policy to be viaticated has been issued as a point policy or involved family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;

(5) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the viator’s interest in those benefits will be transferred as a result of the viatical settlement contract; and

(6) State whether the funds will be escrowed with an independent third party during the transfer process and, if so,
provide the name, business address and telephone number of
the independent third-party escrow agent, and the fact that the
viator or owner may inspect or receive copies of the relevant
escrow or trust agreements or documents.

(c) A viatical settlement broker shall provide the viator
with at least the following disclosures no later than the date
the viatical settlement contract is signed by all parties. The
disclosures shall be conspicuously displayed in the viatical
settlement contract or in a separate document signed by the
viator and provide the following information:

(1) The name, business address and telephone number of
the viatical settlement broker;

(2) A full, complete and accurate description of all offers,
counter-offers, acceptances and rejections relating to the
proposed viatical settlement contract;

(3) A written disclosure of any affiliations or contractual
arrangements between the viatical settlement broker and any
person making an offer in connection with the proposed
viatical settlement contracts;

(4) The amount and method of calculating the broker’s
compensation, which term “compensation” includes anything
of value paid or given to a viatical settlement broker for the
placement of a policy; and

(5) Where any portion of the viatical settlement broker’s
compensation, as defined in subdivision (4) of this
subsection, is taken from a proposed viatical settlement offer,
the broker shall disclose the total amount of the viatical
settlement offer and the percentage of the viatical settlement
offer comprised by the viatical settlement broker’s
compensation.
(d) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change.


Before the initiation of a plan, transaction or series of transactions, a viatical settlement broker or viatical settlement provider shall fully disclose to an insurer a plan, transaction or series of transactions, to which the viatical settlement broker or viatical settlement provider is a part, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime prior to, or during the first five years after, issuance of the policy.


(a)(1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(A) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(B) A document in which the insured consents to the release of his or her medical records to a licensed viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(2) Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option,
promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viated policy. The notice shall be accompanied by the documents required by subdivision (3) of this subsection.

(3) The viatical provider shall deliver a copy of the medical release required under paragraph (B), subdivision (1) of this subsection, a copy of the viator’s application for the viatical settlement contract, the notice required under subdivision (2) of this subsection and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The request for verification of coverage shall be on a form prescribed by the commissioner.

(4) The insurer shall respond to a request for verification of coverage within thirty calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification made on an approved form or any facsimile or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of subsection (c), section eleven of this article and section sixteen of this article.

(5) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full understanding of the viatical settlement contract, that he or she has a full understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into
the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

(b) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

(c) All viatical settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the contract before the earlier of sixty calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been sent to the viator as provided in subsection (e) of this section. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a result of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, any premiums, loans and loan interest that have been paid by the viatical settlement provider or purchaser, which shall be paid within sixty calendar days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection
with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator’s notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(d) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the escrow agent receives the document or, if the viator erroneously provides the documents directly to the provider, after the viatical settlement provider receives the documents, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally charted financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership assignment or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent’s receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(e) Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to subdivision (7), subsection (a), section eight of this article renders the viatical settlement contract voidable by the viator for lack of consideration until the time
consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via United State Postal Service or other nationally recognized delivery service.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured’s health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.


(a) It is a violation of this article for any person to enter into a viatical settlement contract at any time prior to the application for or issuance of a policy that is the subject of a viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period after issuance of the policy or certificate:

(1) The policy was issued upon the viator’s exercise of conversion rights arising out of a group or individual policy,
provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty (60) months. The time covered under a group policy shall be computed without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(2) The viator certifies and submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within that five-year period:

(A) The viator or insured is terminally or chronically ill;

(B) The viator’s spouse dies;

(C) The viator divorces his or her spouse;

(D) The viator retires from full-time employment;

(E) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment; or

(F) A court of competent jurisdiction enters a final order, judgment or decree on the application of a creditor of the viator and adjudicates the viator bankrupt or insolvent or approves a petition seeking reorganization of the viator or appoints a receiver, trustee or liquidator to all or a substantial part of the viator’s assets; or

(3) The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and, at all times during that two-year period, all of the following conditions are true with respect to the policy;

(A) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life
insurance policy being financed only to the extent of its net
cash surrender value, provided by, or fully recourse liability
incurred by, the insured on a person described in
subparagraph (iv), paragraph (C), subdivision (13), section
two of this article;

(B) There is no agreement or understanding with any
other person to guarantee any such liability or to purchase, or
stand ready to purchase, the policy, including through an
assumption or forgiveness of the loan; and

(C) Neither the insured nor the policy has been evaluated
for settlement.

(b) Copies of the independent evidence described in
subdivision (2), subsection (a) of this section and documents
required by subsection (a), section ten of this article shall be
submitted to the insurer when the viatical settlement provider
or other party entering into a viatical settlement contract with
a viator submits a request to the insurer for verification of
coverage. The copies shall be accompanied by a letter of
attestation from the viatical settlement provider that the
copies are true and correct copies of the documents received
by the viatical settlement provider.

(c) If the viatical settlement provider submits to the
insurer a copy of the owner or insured's certification
described in and the independent evidence required by
subdivision (2), subsection (a) of this section when the
provider submits a request to the insurer to effect the transfer
of the policy or certificate to the viatical settlement provider,
the copy shall be deemed to conclusively establish that the
viatical settlement contract satisfies the requirements of this
section and the insurer shall timely respond to the request.

(d) No insurer may, as a condition of responding to a
request for verification of coverage or effecting the transfer
of a policy pursuant to a viatical settlement contract, require
that the viator, insured, viatical settlement provider or viatical settlement broker sign any forms, disclosures, consent or waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.

(e) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the request change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

§33-13C-12. Prohibited practices and conflicts of interest.

(a) With respect to any viatical settlement contract or insurance policy, no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity or related provider trust that is controlling, controlled by or under common control with such viatical settlement broker.

(b) With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity or related provider trust that is involved in such viatical settlement contract.

(c) A violation of subsection (a) or (b) of this section shall be deemed a fraudulent viatical settlement act.
19 (d) No viatical settlement provider shall enter into a
20 viatical settlement contract unless the viatical settlement
21 promotional, advertising and marketing materials, as may be
22 prescribed by rule, have been filed with the commissioner.
23 In no event shall any marketing materials expressly reference
24 that the insurance is “free” for any period of time. The
25 inclusion of any reference in the marketing materials that
26 would cause a viator to reasonably believe that the insurance
27 is free for any period of time shall be considered a violation
28 of this article.

29 (e) No life insurance producer, insurance company,
30 viatical settlement broker or viatical settlement provider shall
31 make any statement or representation to the applicant or
32 policyholder in connection with the sale or financing of a life
33 insurance policy to the effect that the insurance is free or
34 without cost to the policyholder for any period of time unless
35 provided in the policy.


1 (a) The purpose of this section is to provide prospective
2 viators with clear and unambiguous statements in the
3 advertisement of viatical settlements and to assure the clear,
4 truthful and adequate disclosure of the benefits, risks,
5 limitations and exclusions of any viatical settlement contract.
6 This purpose is intended to be accomplished by the
7 establishment of guidelines and standards of permissible and
8 impermissible conduct in the advertising of viatical
9 settlements to assure that product descriptions are presented
10 in a manner that prevents unfair, deceptive or misleading
11 advertising and is conducive to accurate presentation and
12 description of viatical settlements through the advertising
13 media and material used by viatical settlement licensees.

14 (b) This section shall apply to any advertising of viatical
15 settlement contracts or related products or services intended
16 for dissemination in this state, including internet advertising
viewed by persons located in this state. Where disclosure
requirements are established pursuant to federal regulation,
this section shall be interpreted so as to minimize or eliminate
conflict with federal regulation wherever possible.

(c) Every viatical settlement licensee shall establish and
at all times maintain a system of control over the content,
form and method of dissemination of all advertisements of its
contracts, products and services. All advertisements,
regardless of by whom written, created, designed or
presented, shall be the responsibility of the viatical settlement
licensees, as well as the individual who created or presented
the advertisement. A system of control shall include regular
routine notification, at least once a year, to agents and others
authorized by the viatical settlement licensee who
disseminates advertisements of the requirements and
procedures for approval prior to the use of any
advertisements not furnished by the viatical settlement
license.

(d) Advertisements shall be truthful and not misleading
in fact or by implication. The form and content of an
advertisement of a viatical settlement contract shall be
sufficiently complete and clear so as to avoid deception. It
shall not have the capacity or tendency to mislead or deceive.
Whether an advertisement has the capacity or tendency to
mislead or deceive shall be determined by the commissioner
from the overall impression that the advertisement may be
reasonably expected to create upon a person of average
education or intelligence within the segment of the public to
which it is directed.

(e) The information required to be disclosed under this
section shall not be minimized, rendered obscure, or
presented in an ambiguous fashion or intermingled with the
text of the advertisement so as to be confusing or misleading.
(1) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a “free look” period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(2) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(3) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(4) The words “free”, “no cost”, “without cost”, “no additional cost”, “at no extra cost” or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(5) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisals or analysis, a licensee under this article makes as its own all the statements.
(A) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(B) An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, the fact shall be disclosed in the advertisement.

(C) When an endorsement refers to benefits received under a viatical settlement contract all pertinent information shall be retained for a period of five years after its use.

(f) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The course of all statistics used in an advertisement shall be identified.

(g) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.
(h) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(i) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

(j) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(k) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensees may not be so licensed. The advertisement may ask the audience to
consult the licensee’s website or contact the department of
insurance to find out if the state requires licensing and, if so,
whether the viatical settlement provider or viatical settlement
broker is licensed.

(l) An advertisement shall not create the impression that
the viatical settlement provider, its financial condition or
status, the payment of its claims or the merits, desirability, or
advisability of its viatical settlement contracts are
recommended or endorsed by any government entity.

(m) The name of the actual licensee shall be stated in all
of its advertisements. An advertisement shall not use a trade
name, any group designation, name of any affiliate or
controlling entity of the licensee, service mark, slogan,
symbol or other device in a manner that would have the
capacity or tendency to mislead or deceive as to the true
identity of the actual licensee or create the false impression
that an affiliate or controlling entity would have any
responsibility for the financial obligation of the licensee.

(n) An advertisement shall not, directly or indirectly,
create the impression that any division or agency of the state
or of the United States government endorses, approves or
favors:

(1) Any viatical settlement licensee or its business
practices or methods of operation;

(2) The merits, desirability or advisability of any viatical
settlement contract;

(3) Any viatical settlement contract; or

(4) Any life insurance policy or life insurance company.

(o) If the advertiser emphasizes the speed with which the
viatication will occur, the advertising must disclose the
average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(p) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

§33-13C-14. Fraud prevention and control.

(a) Fraudulent viatical settlement acts, interference and participation of convicted felons prohibited. --

(1) A person shall not commit a fraudulent viatical settlement act.

(2) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this article or investigations of suspected or actual violations of this article.

(3) A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(b) Fraud warning required. --

(1) Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.”
(2) The lack of a statement as required in subdivision (1) of this subsection does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(c) (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be or has been committed shall provide such information to the commissioner.

(2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(d) (1) No civil liability shall be imposed on and no cause of action shall arise from a person’s furnishing information concerning suspected, anticipated or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts if the information is provided without actual malice and is provided to or received from:

(A) The commissioner or the commissioner’s employees, agents or representatives;

(B) Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

(C) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person’s agents, employees or representatives;

(D) The National Association of Insurance Commissioners (NAIC), National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents or representatives, or other regulatory body overseeing
life insurance, viatical settlements, securities or investment fraud; or

(E) The life insurer that issued the life insurance policy covering the life of the insured.

(2) A person furnishing information pursuant to subdivision (1) of this subsection shall be entitled to an award of attorney’s fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this article and the party bringing the action was not substantially justified in doing so.

(3) This subsection does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision (1) of this subsection.

(e) (1) Documents and evidence provided pursuant to subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(2) The commissioner may release documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts in administrative or judicial proceedings to enforce laws administered by the commissioner; to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; or, at the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act: Provided, That release of documents and evidence under this subdivision does not abrogate or modify the privilege granted in subdivision (1) of this subsection.
This section does not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

(3) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(g) (1) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably computed to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(2) Antifraud initiatives shall include:

(A) Fraud investigators who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

(B) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:
(i) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(ii) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;

(iii) A description of the plan for antifraud education and training of underwriters and other personnel; and

(iv) A description or chart outlining the organization arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(3) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

§33-13C-15. Injunctions; civil remedies; cease and desist.

(a) In addition to the penalties and other enforcement provisions of this chapter, if any person violates any provision of this article or of any rule implementing this article, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.

(b) Any person damaged by the acts of a person in violation of this article may bring a civil action against the person committing the violation in a court of competent jurisdiction.
(c) The commissioner may issue cease and desist order upon a person that violates any provision of this article or any rule promulgated thereunder, any order adopted by the commissioner, or any written agreement entered into with the commissioner.

(d) When the commissioner finds that an activity in violation of this article presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to this chapter.

(e) In addition to the penalties and other enforcement provisions of this article, any person who violates this article is subject to civil penalties of up to ten thousand dollars per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing. The commissioner’s order may require a person found to be in violation of this article to make restitution to persons aggrieved by violations of this article.

§33-13C-16. Criminal penalties.

(a) A viator convicted of a fraudulent viatical settlement act is guilty of a felony and, upon conviction thereof, shall be sentenced as follows:

(1) Imprisonment in a state correctional facility for not more than twenty years or payment of a fine of not more than one hundred thousand dollars, or both, if the value of the
viatical settlement contract is more than thirty-five thousand dollars;

(2) Imprisonment in a state correctional facility for not more than ten years or to payment of a fine of not more than twenty thousand dollars, or both if the value of the viatical settlement contract is more than two thousand five hundred dollars, but not more than thirty-five thousand dollars;

(3) Imprisonment in a state correctional facility for not more than five years or payment of a fine of not more than ten thousand dollars, or both, if the value of the viatical settlement contract is more than five hundred dollars, but not more than two thousand five hundred dollars.

(b) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail not more than one year, or both fined and imprisoned.

§33-13C-17. Authority to promulgate rules.

The commissioner shall have the authority to promulgate legislative rules, including emergency rules, implementing this article, pursuant to article three, chapter twenty-nine-a of this code. Such rules may include standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill; regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill; and provisions governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate.
§33-13C-18. No preemption of securities laws.

This article shall not preempt, supersede or limit any provision of any state securities law or any rule, order or notice issued thereunder.

CHAPTER 125

(Com. Sub. for H.B. 4404 - By Delegates Kominar, Webster, Mahan, Klempa, Cann, White, Long, Crosier, Williams and Ashley)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]


Be it enacted by the Legislature of West Virginia:

ARTICLE 15E. DISCOUNT MEDICAL PLAN ORGANIZATIONS AND DISCOUNT PRESCRIPTION DRUG PLAN ORGANIZATIONS ACT.

§33-15E-2. Purpose.
§33-15E-4. Licensing requirements.
§33-15E-5. Minimum capital requirements.
§33-15E-8. Charges and fees; refund requirements, bundling of services.
§33-15E-9. Record filing and retention requirements.
§33-15E-10. Provider agreements; provider listing requirements.
§33-15E-11. Marketing requirements.


1 This article shall be cited as the “Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations Act.”

§33-15E-2. Purpose.

1 The purpose of this article is to establish standards for discount medical plan organizations and discount prescription drug plan organizations in order to better protect consumers from unfair or deceptive marketing, sales and enrollment practices and to facilitate consumer understanding of the role and function of the organizations in providing access to medical or ancillary services.


1 For purposes of this article:
(1) “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified person.

(2) “Ancillary services” includes audiology, dental, vision, mental health, substance abuse, chiropractic and podiatry services.

(3) “Control” or “controlled by” or “under common control with” has the same meaning ascribed to them in subsection (d), section two, article forty-six of this chapter.

(4) “Discount medical plan” means a business arrangement or contract in which a person, in exchange for fees, dues, charges or other consideration, offers access for its plan members to providers of medical or ancillary services and the right to receive discounts on medical or ancillary services provided under the discount medical plan from those providers. “Discount medical plan” does not include any plan that does not charge a membership or other fee to use the plan’s discount medical card.

(5) “Discount prescription drug plan” means a business arrangement or contract in which a person, in exchange for fees, dues, charges or other consideration, provides access for its plan members to providers of pharmacy services and the right to receive discounts on pharmacy services provided under the discount prescription drug plan from those providers. “Discount prescription drug plan” does not include:

(A) Any plan that does not charge a membership or other fee to use the plan’s discount prescription drug card;

(B) A patient access program; or

(C) A Medicare prescription drug plan.
(6) “Discount medical plan organization” means an entity that contracts with providers, provider networks or other discount medical plan organizations to offer access to medical or ancillary services at a discount to plan members, provides access for discount medical plan members to the services in exchange for fees, dues, charges or other consideration, and determines the charges to plan members.

(7) “Discount prescription drug plan organization” means an entity that contracts with providers, pharmacy networks or other discount prescription drug plan organizations to offer access to pharmacy services to plan members at a discount, provides access for discount prescription drug plan members to the services in exchange for fees, dues, charges or other consideration, and determines the charges to plan members.

(8) “Facility” means an institution providing medical or ancillary services or a health care setting, including, hospitals or other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, rehabilitation centers or diagnostic laboratories or imaging centers.

(9) “Health care professional” means a physician, pharmacist or other health care practitioner who is licensed to perform specified medical or ancillary services within the scope of his or her license.

(10) “Marketer” means a person that markets, promotes, sells or distributes a discount medical plan, including any entity that places its name on and markets or distributes a discount medical plan pursuant to a marketing agreement with a discount medical plan organization.

(11) “Medical services” means any maintenance, care of or preventive care for the human body or care, service or treatment of an illness or dysfunction of or injury to the human body, and includes, physician care, inpatient care,
hospital surgical services, emergency services, ambulance services, laboratory services and medical equipment and supplies. “Medical services” does not include pharmacy or ancillary services.

(12) “Medicare prescription drug plan” means a plan that provides a Medicare Part D prescription drug benefit in accordance with the requirements of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173 §101 et seq.

(13) “Member” means any person who pays fees, dues, charges or other consideration for the right to receive the benefits of a discount medical plan or discount prescription drug plan.

(14) “Patient access program” means a voluntary program sponsored by one or more pharmaceutical manufacturers that provides free or discounted health care products directly to low income or uninsured individuals either through a discount card or direct shipment.

(15) “Person” means an individual, a corporation, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing.

(16) “Pharmacy services” includes pharmaceutical supplies and prescription drugs.

(17) “Provider” means any health care professional or facility that has contracted, directly or indirectly, with a discount medical plan organization to provide medical or ancillary services to members.

(18) “Provider network” means an entity that negotiates directly or indirectly with a discount medical plan
organization on behalf of more than one provider to provide medical or ancillary services to members.

§33-15E-4. Licensing requirements.

(a) A person is required to obtain a license prior to doing business in this state as a discount medical plan organization.

(b) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, as well as emergency rules in accordance with section fifteen of said article, setting forth the licensing requirements. These rules shall include, at a minimum:

1. All necessary forms and other information considered necessary and required by the commissioner for processing the license application;
2. Applicable fees;
3. Reciprocity requirements;
4. Time frames for the application and approval process;
5. Conditions of approval of the license application or denial of the license;
6. Renewal process;
7. Notice requirements; and
8. Any other provisions considered necessary by the commissioner to effectuate the provisions of this article.

§33-15E-5. Minimum capital requirements.
(a) Before the commissioner issues a license to any person required to obtain a license under section four of this article, the person seeking to operate a discount medical plan organization shall demonstrate that it has a positive net worth of at least one hundred fifty thousand dollars.

(b) Each discount medical plan organization shall at all times maintain a positive net worth of at least one hundred fifty thousand dollars.


Each licensed discount medical plan organization shall maintain in force a surety bond in its own name, in an amount not less than thirty-five thousand dollars, in favor of the commissioner for the benefit of any person who is damaged by any violation of this article. The bond shall cover any violation occurring during the time period during which the bond is in effect and shall be issued by an insurance company licensed to do business in this state. A copy of the bond or a statement identifying the depository, trustee, and account number of the surety account, and thereafter proof of annual renewal of the bond or maintenance of the surety account, shall be filed with the commissioner.


The commissioner may examine the business and affairs of any discount medical plan organization to protect the interests of the residents of this state based on the following reasons, including complaint indices, recent complaints or information from other states, or as he or she deems necessary. An examination shall be performed in accordance with the provisions of section nine, article two of this chapter, except that a discount medical plan organization that is the subject of the examination shall pay the expenses incurred in conducting the examination. Failure by the discount medical
plan organization to pay the expenses is grounds for the refusal to renew, revoke or suspend a license to operate as a discount medical plan organization.

§33-15E-8. Charges and fees; refund requirements; bundling of services.

(a) A discount medical plan organization may charge a periodic charge as well as a reasonable one-time processing fee for a discount medical plan.

(b)(1) All discount medical plan certificates or other document demonstrating membership in the plan issued to persons in this state shall have a notice, prominently printed on the first page of the document or in a similarly conspicuous manner, stating that the member has the right to cancel his or her membership for any reason within thirty days of its receipt. If a member cancels his or her membership in the discount medical plan organization within the first thirty days after the date of receipt of the written document demonstrating membership, the member shall, upon return of the discount medical plan card to the discount medical plan organization, receive a reimbursement of all periodic charges and the amount of any one-time processing fee that exceeds thirty dollars. Notice of cancellation is deemed given when delivered by hand or deposited in a mailbox, properly addressed and postage prepaid to the mailing address of the discount medical plan organization or e-mailed to the e-mail address of the discount medical plan organization.

(2) If the discount medical plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount medical plan organization shall make a pro rata reimbursement of all periodic charges to the member.
28 (c) When a marketer or discount medical plan organization sells a discount medical plan in conjunction with any other products, the marketer or discount medical plan organization shall:

32 (1) Provide the charges for each discount medical plan in writing to the member; or

34 (2) Reimburse the member for all periodic charges for the discount medical plan and all periodic charges for any other product if the member cancels his or her membership in accordance with subdivision (1), subsection (b) of this section.

39 (d) A health carrier that provides a discount medical plan product that is incidental to the insured product is not subject to this section.

§33-15E-9. Record filing and retention requirements.

1 (a)(1) Upon demand by the commissioner, a discount medical plan organization shall file with the commissioner a list of prospective member fees and charges associated with the discount medical plan.

5 (b) A copy of every form to be used by a discount medical plan organization, including the form for the written document demonstrating membership in the plan and all advertising, marketing materials and brochures, shall be retained by such organization and available for inspection by the commissioner for at least two years from the date on which such form was last used.

§33-15E-10. Provider agreements; provider listing requirements.

1 (a)(1) A discount medical plan organization shall have a written provider agreement with all providers offering
medical or ancillary services to its members. The written
provider agreement may be entered into directly with the
provider or indirectly with a provider network to which the
provider belongs.

(2) A provider agreement between a discount medical
plan organization and a provider shall provide the following:

(A) A list of the medical or ancillary services and
products to be provided at a discount;

(B) The amount or amounts of the discounts or,
alternatively, a fee schedule that reflects the provider’s
discounted rates; and

(C) A written document demonstrating that the provider
has agreed that it will not charge members more than the
discounted rates.

(3) A provider agreement between a discount medical
plan organization and a provider network shall require that
the provider network have written agreements with its
providers that:

(A) Contain the provisions described in subdivision (2)
of this subsection;

(B) Authorize the provider network to contract with the
discount medical plan organization on behalf of the provider;
and

(C) Require the provider network to maintain an
up-to-date list of its contracted providers and to provide the
list on a monthly basis to the discount medical plan
organization.

(4) A provider agreement between a discount medical
plan organization and an entity that contracts with a provider
network shall require that the entity, in its contract with the provider network, require the provider network to have written agreements with its providers that comply with subdivision (3) of this subsection.

(5) The discount medical plan organization shall maintain a copy of each of its active provider agreements; each such organization shall also retain a copy of every inactive provider agreement for at least two years after the expiration date of each such agreement.

(b) Each discount medical plan organization shall maintain on its Internet website page a current list of the names and addresses of the providers with which it has contracted directly or through a provider network; the address of the website shall be prominently displayed on all of the discount medical plan organization’s advertisements, marketing materials, brochures and discount medical plan cards.

§33-15E-11. Marketing requirements.

(a) A discount medical plan organization may market directly or contract with other marketers for the distribution of its product.

(b)(1) A discount medical plan organization shall have a written agreement with a marketer prior to the marketer’s marketing, promoting, selling or distributing the discount medical plan.

(2) The agreement between the discount medical plan organization and the marketer shall prohibit the marketer from using advertising, marketing materials, brochures and discount medical plan cards without the discount medical plan organization’s approval in writing.
(3) The discount medical plan organization shall be bound by and responsible for the activities of a marketer that are within the scope of the marketer’s agency relationship with the organization.

(c) A discount medical plan organization shall approve in writing all advertisements, marketing materials, brochures and discount cards used by marketers to market, promote, sell or distribute the discount medical plan prior to their use.


(a) If the information required in subsection (b) of this section is not provided at the time of renewal of a license under section four of this article, a discount medical plan organization shall file an annual report with the commissioner in the form prescribed by the commissioner, within three months after the end of each fiscal year.

(b) The report shall include:

(1) Audited financial statements prepared in accordance with generally accepted accounting principals certified by an independent certified public accountant, including the organization’s balance sheet, income statement and statement of changes in cash flow for the preceding year, except that, subject to the approval of the commissioner, an organization that is an affiliate of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity may instead submit the audited financial statements of the parent entity and a written guaranty that the minimum capital requirements required under section five of this article will be met by the parent entity;

(2) Any changes in the list of names and residence addresses of all persons responsible for the conduct of the organization’s affairs, together with a disclosure of the extent
and nature of any contracts or arrangements with these persons and the discount medical plan organization, including any possible conflicts of interest;

(3) The number of discount medical plan members in the state; and

(4) Any other information relating to the performance of the discount medical plan organization that may be required by the commissioner.

(c) Any discount medical plan organization that fails to file an annual report in the form and within the time required by this section may be fined up to five hundred dollars per day for the first ten days during which the violation continues and up to one thousand dollars per day after the first ten days during which the violation continues. The commissioner may also suspend the organization's authority to enroll new members or to do business in this state while the violation continues.


(a) A discount prescription drug plan organization shall comply with sections eight, nine, ten and eleven of this article and shall report any of the information described in section twelve of this article in the form and manner as the commissioner may require. A discount prescription drug plan organization is also subject to sections fourteen, fifteen and sixteen of this article.

(b) Each discount prescription drug plan organization shall designate and provide the commissioner with the name, address and telephone number of a discount prescription drug plan compliance officer responsible for ensuring compliance with the provisions of this article that are applicable to discount prescription drug plans and discount prescription drug plan organizations.

(a) The commissioner may investigate the business affairs and conduct of every person applying for or holding a discount medical plan organization license and the operational affairs of a discount prescription drug plan organization to determine whether a violation of this article or any rule promulgated hereunder has occurred or is occurring.

(b) If the commissioner has cause to believe that a violation of this article or any rule promulgated hereunder has occurred or is occurring and that an enforcement action may be warranted, he or she shall notify the discount medical plan organization or discount prescription drug plan organization in writing, specifically stating the grounds for enforcement action and informing the organization that it may pursue a hearing on the matter in accordance with the provisions of section thirteen, article two of this chapter.

(c) If, after notice and hearing, a violation of this article or any legislative rule promulgated under this article is found, the Insurance Commissioner may take one or more of the following enforcement actions:

(1) Place a discount medical plan organization on probation or suspend, revoke or refuse to issue or renew the organization’s license;

(2) Levy a civil penalty on the organization in an amount not exceeding ten thousand dollars for each violation;

(3) Issue an administrative order requiring the discount medical plan organization or discount prescription drug plan organization to cease and desist from engaging in the act or practice that constitutes the violation; or
(4) Suspend the authority of the discount medical plan organization or discount prescription drug plan organization to enroll new members.

(d) In addition to the penalties and other provisions of this article, the commissioner may seek both temporary and permanent injunctive relief in the circuit court of Kanawha County when a discount medical plan is being operated by a person or entity that is not licensed pursuant to this article or any person has engaged or is engaging in any activity prohibited by this article or any rule adopted pursuant to this article.


(a) Any person that willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (a), section four of this article, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty thousand dollars for each unauthorized act or imprisoned in the state correctional facility not less than one nor more than five years, or both fined and imprisoned.

(b)(1) A person that collects fees for purported membership in a discount medical plan or discount prescription drug plan and knowingly and willfully fails to provide benefits with a value of one thousand dollars or more, is guilty of a felony and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars or imprisoned in a state correctional facility not less than one nor more than ten years, or both fined and imprisoned.

(2) A person that collects fees for purported membership in a discount medical plan or discount prescription drug plan and knowingly and willfully fails to provide benefits with a value of less than one thousand dollars, is guilty of a misdemeanor and, upon conviction thereof, shall be fined an

1. The insurance fraud unit created pursuant to the provisions of section eight, article forty-one of this chapter may investigate suspected violations of this article.


1. The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article. The commissioner may also promulgate emergency legislative rules to carry out the provisions of this article, including rules setting forth the requirements and prohibited practices with regard to the marketing of discount medical plans and discount prescription drug plans and for disclosures to members and prospective members of the plans.

CHAPTER 126

(Com. Sub. for H.B. 4137 - By Delegate Morgan)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §33-17-9a of the Code of West Virginia, 1931, as amended, relating to clarifying that a municipality and county will be notified in writing by an
insurance company when the policy provides for cleanup or removal of the remains of a structure when a total loss to a structure occurs within that county or municipality.

Be it enacted by the Legislature of West Virginia:

That §33-17-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9a. Notice of insurance proceeds.

Upon notice of a claim of an insured total loss to a structure located in this state, insurance companies must notify the insured, and the municipality and county in which the structure is located, of any coverage in the insurance policy providing cleanup, removal of any refuse, debris, remnants or remains of the dwelling and appurtenances and securing the structure. The notification shall be by letter to the insured and municipality and county in which the structure is located, mailed within ten days of the notification of the claim, and shall include, but not be limited to:

(a) The terms and limits of coverage designated by the insurance policy for securing, cleanup and removal; and

(b) Any time limitations imposed on the insured for securing, cleanup and removal.
CHAPTER 127

(Com. Sub. for H.B. 4079 - By Delegates Morgan, Martin and Hartman)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-46A-1, §33-46A-2, §33-46A-3, §33-46A-4, §33-46A-5, §33-46A-6, §33-46A-7, §33-46A-8, §33-46A-9, and §33-46A-10, all relating to Professional Employer Organizations; providing declaration of purpose and intent; providing definitions; clarifying rights, duties and obligations unaffected by the article; requiring license from the Insurance Commissioner to engage in the business of a Professional Employer Organization; setting forth licensure requirements; providing for legislative, emergency and legislative exempt rules; authorizing the Insurance Commissioner to establish licensure and other fees; allowing the Insurance Commissioner to examine business records and documents; providing for confidentiality of certain information; setting forth requirements for Professional Employer Agreements; providing requirements for workers’ compensation coverage; providing enforcement measures including penalties; requiring study of health plans, taxation, unemployment and labor laws; and prohibiting self-funded health plans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.

§33-46A-1. Purpose and intent.


§33-46A-3. Rights, duties and obligations unaffected by this article.

§33-46A-4. Licensing requirements.

§33-46A-5. Examinations; costs; confidentiality of information.


§33-46A-10. Rulemaking authority; fees.

§33-46A-1. Purpose and intent.

The Legislature hereby finds that:

1 (1) Professional Employer Organizations (hereinafter "PEOs") provide a valuable service to commerce and the citizens of this state by increasing the opportunities of employers to develop cost-effective methods of satisfying their personnel requirements and providing employees with access to certain employment benefits which might otherwise not be available to them;

2 (2) PEOs operating in this state should be properly recognized and regulated by the Insurance Commissioner; and

3 (3) Any allocation of employer duties and responsibilities between a PEO and a client-employer pursuant to this article should preserve all rights to which covered employees would be entitled under a traditional employment relationship.

(a) "Administrative fee" means the amount charged to a client-employer by a PEO for professional employer services. It does not include amounts paid by a client-employer to the PEO for wages and salaries, benefits, payroll taxes, withholding or assessments paid by the PEO to or on behalf of covered employees under the professional employer agreement.

(b) "Client-employer" means an employer who enters into a professional employer agreement with a PEO.

(c) "Covered employee" means a person employed by a client-employer for whom certain employer responsibilities are shared or allocated pursuant to a PEO agreement. Persons who are officers, directors, shareholders, partners and managers of the client-employer and who perform day-to-day operational services for the client-employer will be covered employees only to the extent expressly set forth in the professional employer agreement.

(d) "PEO group" means two or more PEOs that are majority owned or commonly controlled by the same entity, parent or controlling persons.

(e) “Person” means a natural person or a legal entity, including, without limitation, a sole proprietorship, firm, partnership, limited liability company, association, trust or corporation.

(f) "Professional employer agreement" means a written contract by and between a client-employer and a PEO under which a PEO contracts to provide professional employer services for an administrative fee.
(g) "Professional employer organization" or "PEO" means a person engaged in the business of providing professional employer services, regardless of its use of the term, or conducting business as a "staff leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name. For purposes of this article, the following is not a PEO:

1. A person who shares employees with a commonly-owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

2. A person who neither holds itself out as a PEO, nor enters into professional employer agreements as its principal business activity;

3. An independent contractor who assumes responsibility for the product produced or service performed by a person or his or her agents and who retains and exercises primary direction and control over the work performed; or

4. A person who provides temporary help services.

(h) "Professional employer services" means functions that are:

1. Allocated to a PEO in a PEO agreement;

2. Customarily exercised by an employer with respect to its employees, including, but not limited to, hiring, firing and disciplining employees, paying wages, withholding and paying payroll taxes, maintaining employee benefit plans, and providing for mandatory workers’ compensation coverage;

3. Exercised with respect to a majority of the employees of a client-employer; and
(4) Intended to be of a continuing rather than a temporary or seasonal nature.

(j) “Worksite employees” means persons employed by a PEO and not by a client-employer.

§33-46A-3. Rights, duties and obligations unaffected by this article.

(a) Nothing in this article or in any professional employer agreement affects, modifies or amends any collective bargaining agreement, or the rights or obligations of a client-employer, PEO or covered employee under the Federal National Labor Relations Act, the Federal Railway Labor Act or article one-a, chapter twenty-one of this code.

(b) Notwithstanding any other provision of this article, nothing in this article or in any professional employer agreement:

(1) Diminishes, abolishes or removes rights of covered employees as to a client-employer or obligations of a client-employer to covered employees, including but not limited to rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices;

(2) Affects, modifies, or amends any contractual relationship or restrictive covenant between a covered employee and a client-employer in effect at the time a professional employer agreement becomes effective; or

(3) Prohibits or amends any contractual relationship or restrictive covenant that is entered into subsequent to the effective date of a professional employer agreement between a client-employer and a covered employee.
§33-46A-4. Licensing requirements.

(a) Except as otherwise provided in this article, no person may provide, advertise or otherwise hold himself, herself or itself out as providing professional employer services to client-employers in this state, unless licensed under this article.

(b) Every PEO operating within this state as of the effective date of this article must obtain a license under this article no later than the thirtieth day of July, two thousand nine.

(c) Each applicant for licensure under this article shall provide the commissioner with the following information:

1. The name or names under which the PEO conducts business;

2. The address of the principal place of business of the PEO and the address of each office it maintains in this state;

3. The PEO's taxpayer or employer identification number;

4. A list by jurisdiction of each name under which the PEO has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities;

5. A statement of ownership, which shall include the name and evidence of the business experience of any person who, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent or more of the equity interests of the PEO;

6. A statement of management, which shall include the name and evidence of the business experience of any person
who serves as president, chief executive officer or otherwise
has the authority to act as senior executive officer of the
PEO; and

(7) The PEO’s most recent audited financial statement
setting forth the financial condition of the PEO or PEO
Group, which may not be older than thirteen months. The
financial statement shall be prepared in accordance with
generally accepted accounting principles, and audited by an
independent certified public accountant licensed to practice
in the jurisdiction in which the accountant is located, and
shall be without qualification as to the going concern status
of the PEO.

(d) An applicant may apply to the commissioner for an
extension of time for filing its financial statement. A request
for an extension must be accompanied by a letter from an
independent certified public accountant licensed to practice
in the jurisdiction in which the accountant is located, stating
the reasons for the delay and the anticipated completion date
of the financial statement.

(e) A PEO who has not had sufficient operating history
to have an audited financial statement based upon at least
twelve months of operating history must meet the financial
capacity requirements set forth in subsection (h) of this
section, and present financial statements reviewed by an
independent certified public accountant licensed to practice
in the jurisdiction in which the accountant is located.

(f) PEOs in a PEO group may satisfy the reporting and
financial requirements of this licensing law on a combined or
consolidated basis provided that each member of the PEO
Group guarantees the obligations under this article of each
other member of the PEO Group. In the case of a PEO
Group that submits a combined or consolidated audited
financial statement including entities that are not PEOs or
that are not in the PEO Group, the controlling entity of the
PEO Group under the consolidated or combined statement must guarantee the obligations of the PEOs in the PEO Group.

(g) Within one hundred eighty days after the end of a licensee's fiscal year, the licensee shall apply for renewal of its license by submitting its most recent audited financial statement meeting the same requirements as for initial licensure, together with any changes in the information required for initial licensure, all as set forth by subsection (c) of this section.

(h) Except for limited licenses granted in accordance with the provisions of subsection (i) of this section, each PEO shall maintain a minimum of one hundred thousand dollars in working capital, as defined by generally accepted accounting principles and as reflected in the financial statements submitted to the commissioner with the application for an initial or renewal license. As an alternative, each PEO may provide a bond, irrevocable letter of credit, or securities with a minimum market value of one hundred thousand dollars to the commissioner; such bond shall be held by a depository designated by the commissioner, securing payment by the PEO of all taxes, wages, benefits or other entitlement due to or with respect to covered employees if the PEO does not make such payments when due. For any PEO whose annual financial statements do not indicate positive working capital, the amount of the bond shall be one hundred thousand dollars plus an amount sufficient to cover the deficit in working capital.

(i) Upon such terms and for such periods as he or she deems appropriate, the commissioner may grant a PEO a limited license. Application for such a license must be submitted on forms prescribed by the commissioner and must demonstrate at a minimum that the applicant:
96 (1) Is licensed or registered as a PEO in another state under terms that are substantially similar to the requirements of this article;

99 (2) Does not maintain an office in this state or directly solicit client-employers located within this state; and

101 (3) Does not have more than fifty covered employees employed in this state on any given day.

103 (j) Except where it is otherwise specially provided, the commissioner shall assess PEOs the following fees: For filing an application pursuant to subsection (b) or (c) of this section and an application to renew a license pursuant to subsection (g) of this section, two hundred dollars; and for receiving and filing annual reports, one hundred dollars.

§33-46A-5. Examinations; costs; confidentiality of information.

1 (a) The commissioner may examine or investigate the business and affairs of any PEO plan he or she considers necessary. The examination or investigation is subject to and shall be performed in accordance with the provisions of section nine, article two of this chapter.

6 (b) The commissioner shall assess the costs of an examination to the PEO.

8 (c) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are subject to the confidentiality provisions of subdivision (4), subsection (l), section nine, article two of this chapter.


1 (a) Each professional employer agreement shall, at a minimum, allocate the responsibility to:
(1) Arrange for the payment of wages to covered employees;

(2) Withhold, collect, report and remit payroll-related and unemployment taxes;

(3) Make payments for employee benefits on behalf of covered employees; and

(4) Provide for mandatory workers' compensation coverage.

(b) Each professional employer agreement shall provide that the client-employer shall retain the right to hire, discipline, and terminate a covered employee: Provided, That every professional employment agreement may provide that the PEO has the right to terminate the professional employment agreement if a client-employer refuses without good cause a request from the PEO that the client-employer discipline or terminate a covered employee as may be necessary to fulfill the PEO's responsibilities under this article and the professional employer agreement.

(c) Except as otherwise provided by law:

(1) A client-employer is solely responsible for the quality, adequacy or safety of the goods or services produced or sold in client-employer's business;

(2) A client-employer is solely responsible for directing, supervising, training and controlling the work of a covered employee, and is solely responsible for the acts, errors or omissions of a covered employee, when the covered employee is engaged in the business activities of the client-employer;

(3) A PEO is not liable for the acts, errors or omissions of a client-employer or of a covered employee of the
client-employer when the covered employee is acting under
the express direction and control of the client-employer.

(d) Within twenty days of its execution, every
professional services agreement shall be filed with the
commissioner. Such agreements are confidential by law and
privileged, are not subject to the provisions of chapter
twenty-nine-b of this code, and are not open to public
inspection.

(e) A covered employee is not, solely as the result of
being a covered employee, an employee of the PEO for
purposes of general liability insurance, fidelity bonds, surety
bonds, wage bonds or liquor liability insurance carried by the
PEO, unless the covered employee is included by specific
reference in the professional employer agreement and
applicable prearranged employment contract, insurance
contract or bond.


(a) The responsibility to obtain workers' compensation
coverage for covered employees in compliance with all
applicable law shall be specifically allocated in the
professional employer agreement to either the
client-employer or the PEO.

(b) If the responsibility is allocated to the PEO under the
agreement:

(1) The agreement shall require that the PEO maintain
and provide workers' compensation coverage for the covered
employees from a carrier authorized to do business in this
state: Provided, That the provisions of section seven, article
two, chapter twenty-three of this chapter may not be
abrogated by a PEO agreement and the client-employer shall
at all times remain ultimately liable under chapter
twenty-three of this code to provide workers’ compensation coverage for its covered employees;

(2) The insurer shall report:

(A) Payroll and claims data for each client-employer to the commissioner or his or her designated advisory organization in a manner that identifies both the client-employer and PEO; and

(B) Coverage status with respect to each client-employer in accordance with the proof of coverage requirements provided for in statute and rules.

(c) Workers’ compensation coverage may be provided:

(1) On a master policy basis, under which a single policy issued to the PEO provides coverage for more than one client-employer, and may also provide coverage to the PEO with respect to its worksite employees: Provided, That on or before the first day of July, two-thousand eight, the commissioner shall promulgate an emergency legislative rule in accordance with the provisions of section fifteen, article three, chapter twenty-nine of this code, and shall also propose an exempt legislative rule for adoption by the industrial council in accordance with the provisions of subdivision (2), subsection (j), section one-a, article one, chapter twenty-three of this code, establishing standards for the reporting of client-employer experience in sufficient detail to enable the assignment of an experience modifier upon termination of the professional employer agreement: Provided, however, That no mandatory workers’ compensation coverage may be provided through a PEO arrangement to any client-employers on a master policy basis other than through coverage in the voluntary market, as that term is defined in subsection (u), section two, article two-c, chapter twenty-three of this code.

(2) On a multiple coordinated policy basis, under which a separate policy is issued to or on behalf of each
(3) On any other basis approved by the commissioner.

(d) This article does not prohibit grouping together the client-employers of a PEO for the purposes of offering dividend eligibility, applying a discount to the premium charged, applying a retrospective rating option arrangement or the use of any other loss sensitive rating options or large deductible policies as allowed under state law.

(e) The protection of the exclusive remedy provision of section six, article two, chapter twenty-three of this code, shall apply to the PEO, the client-employer, and to all covered employees and other employees of the client-employer irrespective of whether the PEO or the client-employer obtains the workers' compensation coverage.

(f) The commissioner shall propose rules in accordance with the provisions of subsection (c), section five, article two-c, chapter twenty-three of this code, for adoption by the Industrial Council, to effectuate the purposes of this section, including the manner in which notice of default of a master policy must be given to client-employers.


(a) No person may offer or provide professional employer services or use the names PEO, Professional Employer Organization, staff leasing, employee leasing, administrative employer or other title representing professional employer services without holding a license issued under the provisions of this article.

(b) The commissioner shall deny, suspend or revoke the license of a PEO if he or she finds that the PEO:
(1) Is in an unsound financial condition;

(2) Is using methods or practices in the conduct of its business that render its transaction of business in this state hazardous or injurious to its client-employers or the public; or

(3) Has failed to pay a judgment rendered against it in this state within sixty days after the judgment has become final.

(c) The commissioner may, after notice and opportunity for a hearing in accordance with the provisions of article two, chapter thirty-three of this code, deny, suspend or revoke the license of a PEO if the commissioner finds that the PEO:

(1) Has violated any lawful rule or order of the commissioner or any provision of the laws of this state;

(2) Has refused to be examined or to produce its accounts, records and files for examination, or if any person responsible for the conduct of affairs of the PEO has refused to give information with respect to its affairs, or has refused to perform any other legal obligation as to an examination, when required by the commissioner. For purposes of this section, persons responsible for the conduct of affairs of the PEO include, but are not limited to, members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent or more of the voting stock, voting securities or voting interest of the administrator; and any other person who exercises control or influence over the affairs of the PEO;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered employees to accept less than the
amount due them or caused covered employees to employ attorneys or bring suit against the PEO to secure full payment or settlement of their claims;

(4) At any time fails to meet any qualification for which issuance of the license could have been refused;

(5) Has been convicted of, or has entered a plea of guilty or no contest to, a felony without regard to whether the adjudication was withheld; or

(6) Is under suspension or revocation in another state.

d) Every PEO licensed under this article is under a continuing duty to notify the commissioner within ten days of any of the events set forth in subdivisions (5) and (6) of subsection (c) or subdivision (3) of subsection (b) of this section.

e) The commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the license of a PEO if the commissioner finds that one or more of the following circumstances exist:

(1) The PEO is insolvent or impaired;

(2) A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the PEO has been commenced in any state; or

(3) The financial condition or business practices of the PEO otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

(f) If the commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this article, the commissioner may, in lieu of suspension or revocation, order the PEO to pay to the State of West Virginia a penalty in a sum not exceeding ten
72 thousand dollars; upon the failure of the PEO to pay the
73 penalty within thirty days after notice of the penalty, the
74 commissioner may revoke or suspend the license of the PEO.

75 (g) When a license has been revoked or suspended or
76 renewal of the license refused, the commissioner may reissue,
77 terminate the suspension or renew the license when he or she
78 is satisfied that the conditions causing the revocation,
79 suspension or refusal to renew have ceased to exist and are
80 unlikely to recur.

§33-46A-9. Study of health plans, taxation, unemployment and
labor laws; self-funded plans prohibited.

1 (a) The Joint Committee on Government and Finance
2 shall, in consultation with the Insurance Commissioner, the
3 Secretary of the Department of Revenue and the Secretary of
4 the Department of Commerce, study the issue of PEO
5 sponsorship of and involvement in employee health plans,
6 including their role in insuring the uninsured and
7 underinsured and their impact on the small group market, as
8 well issues related to how the operation of PEOs affects other
9 areas such as taxation and unemployment insurance. The
10 Joint Committee shall report back to the Legislature on or
11 before the thirty-first day of December, two-thousand eight
12 on its findings, conclusions and recommendations, together
13 with drafts of any legislation necessary to effectuate its
14 recommendations.

15 (b) PEOs are expressly prohibited from self-funding
16 health plans for covered employees.

§33-46A-10. Rulemaking authority; fees.

1 (a) In addition to the authority to propose rules as
2 provided in section seven of this article, the commissioner
3 may propose rules for legislative approval in accordance with
4 the provisions of article three, chapter twenty-nine-a of this
code, to implement the provisions of this article, including but not limited to:

(1) Requirements for the issuance and renewal of licenses;

(2) Requirements for denying, suspending, revoking, reinstating or limiting the practice of a licensee;

(3) Requirements for activating inactive or revoked licenses;

(4) Special financial and other licensing requirements for small, start-up PEOs; and

(5) A schedule of fees.

(b) The commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, for any purposes set forth for legislative rules in subsection (a) of this section.

CHAPTER 128

(Com. Sub. for S.B. 311 - By Senators Kessler, Plymale, Love and Oliverio)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §52-1-14 of the Code of West Virginia, 1931, as amended, relating to authorizing judges to order jurors be drawn from another county or counties in certain cases; providing contents of court orders directing the
summoning of jurors; and providing that the county for which
the jurors served shall compensate the jurors.

Be it enacted by the Legislature of West Virginia:

That §52-1-14 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-14. When and how jurors are to be summoned from a
county to serve in another county.

(a) In any criminal case or any civil case referred to the
Mass Litigation Panel, in any court, if qualified jurors, not
exempt from serving, cannot be conveniently found in the
county in which the trial is to be held, the judge of the court
shall enter an order directing as many jurors as necessary be
summoned from any other county or counties: Provided, That
for those cases referred to the Mass Litigation Panel, jurors
may only be summoned from any contiguous county.

(b) The court order shall include the following:

(1) The date on which the jurors are required to attend;

(2) The county or counties from which the jurors shall be
drawn; and

(3) The number of jurors to be drawn.

(c) The judge issuing the order shall direct his or her
circuit clerk to forward a certified copy of the order to the
circuit clerk in the county or counties from which the jurors
are to be drawn.

(d) The circuit clerk of the court conducting the drawing
shall do so in the manner provided by law for the drawing of
petit jurors. The circuit clerk shall draw a separate jury pool specifically designated for the purpose of complying with the court order. The proceedings for drawing the jurors and the names of the jurors drawn shall be certified by the clerk of the circuit court of the county or counties designated to conduct the drawing and a copy of the certification shall be forwarded to the clerk of the circuit court in the county where the trial is to be held. After forwarding a copy of the certification, the clerk of the circuit court of the county or counties from which the jurors were drawn shall summon the jurors to appear for jury service in the county where the trial is to be held pursuant to the provisions of section nine of this article.

(e) Jurors summoned from a county to serve in another county shall be reimbursed expenses and compensated by the county for which the juror actually served.

CHAPTER 129

(Com. Sub. for H.B. 4032 - By Delegates White and Kominar)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §21-5-3 of the Code of West Virginia, 1931, as amended, relating to payment of wages through a direct deposit system using an electronic payment card or other means of electronic transfer; defining terms; and requiring written agreement to use the payroll card.

Be it enacted by the Legislature of West Virginia:
That §21-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 (a) Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least once in every two weeks, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

8 (b) Payment required in subsection (a) of this section shall be made:

10 (1) In lawful money of the United States;

12 (2) By cash order as described and required in section four of this article;

13 (3) By deposit or electronic transfer of immediately available funds into an employee’s payroll card account in a federally insured depository institution. The term “payroll card account” means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee’s wages, salary, commissions or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or another person. “Payroll card” means a card, code or combination thereof or other means of access to an employee’s payroll
card account, by which the employee may initiate electronic
fund transfers or use a payroll card to make purchases or
payments. Payment of employee compensation by means of
a payroll card must be agreed upon in writing by both the
person, form or corporation paying the compensation and the
person being compensated.

(4) By any method of depositing immediately available
funds in an employee's demand or time account in a bank,
credit union or savings and loan institution that may be
agreed upon in writing between the employee and such
person, firm or corporation, which agreement shall
specifically identify the employee, the financial institution,
the type of account and the account number: Provided, That
nothing herein contained shall be construed in a manner to
require any person, firm or corporation to pay employees by
depositing funds in a financial institution.

(c) If, at any time of payment, any employee shall be
absent from his or her regular place of labor and shall not
receive his or her wages through a duly authorized
representative, he or she shall be entitled to payment at any
time thereafter upon demand upon the proper paymaster at
the place where his or her wages are usually paid and where
the next pay is due.

(d) Nothing herein contained shall affect the right of an
employee to assign part of his or her claim against his or her
employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages shall be
valid for a period exceeding one year from the date of the
assignment or order. An assignment or order shall be
acknowledged by the party making the same before a notary
public or other officer authorized to take acknowledgments,
and any order or assignment shall specify thereon the total
amount due and collectible by virtue of the same and three
fours of the periodical earnings or wages of the assignor shall at all times be exempt from such assignment or order and no assignment or order shall be valid which does not so state upon its face: Provided, That no such order or assignment shall be valid unless the written acceptance of the employer of the assignor to the making thereof, is endorsed thereon: Provided, however, That nothing herein contained shall be construed as affecting the right of employer and employees to agree between themselves as to deductions to be made from the payroll of employees.

CHAPTER 130

(H.B. 4394 - By Delegates Tucker, Martin, Perry, Stemple, Perdue, Shook, Hamilton and Sobonya)

[Passed March 7, 2008; in effect from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §21-9-2 of the Code of West Virginia, 1931, as amended, relating to the restoration of the licensure exemption for certain contractors of manufactured housing installation.

Be it enacted by the Legislature of West Virginia:

That §21-9-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

(a) “Board” means the West Virginia Manufactured Housing Construction and Safety Board created in this article.

(b) “Commissioner” means the Commissioner of the West Virginia State Division of Labor.

(c) “Contractor” means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. The operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission.

Contractor does not include:

(1) A person who personally does work on a manufactured home which the person owns or leases; or

(2) A person who is licensed under article eleven of this chapter and is performing work on a manufactured home pursuant to a contract with a person licensed under section nine of this article.

(d) “Dealer” means any person engaged in this state in the sale, leasing or distributing of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

(e) “Defect” includes any defect in the performance, construction, components or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended.
(f) “Distributor” means any person engaged in this state in the sale and distribution of manufactured homes for resale.

(g) “Federal standards” means the National Manufactured Housing Construction and Safety Standards Act of 1974, and federal manufactured home construction and safety standards and regulations promulgated by the Secretary of HUD to implement that act.

(h) “HUD” means the United States Department of Housing and Urban Development.

(i) “Manufacturer” means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

(j) “Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty or more feet in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure’s exterior dimensions measured at the largest horizontal projections when erected on site.

(k) “Purchaser” means the first person purchasing a manufactured home in good faith for purposes other than resale.
AN ACT to amend and reenact §30-13A-27 of the Code of West Virginia, 1931, as amended, relating to specifying the United States survey foot and the associated conversion factor of one meter equals 39.37/12 feet for the purposes of the West Virginia Coordinate System of 1983.

Be it enacted by the Legislature of West Virginia:

That §30-13A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-27. West Virginia coordinate systems; definition; plane coordinates, limitations of use; conversion factor for meters to feet.

(a) The systems of plane coordinates which have been established by the National Ocean Survey/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors for defining and stating the geographic position or locations of points on the surface of the earth within West Virginia are to be known and designated as the West Virginia Coordinate System of 1927 and the West Virginia Coordinate System of 1983.
(b) For the purpose of the use of this system the state is divided into a North Zone and a South Zone.

The area now included in the following counties is the North Zone: Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and Wood.

The area now included in the following counties is the South Zone: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Putnam, Raleigh, Randolph, Roane, Summers, Upshur, Wayne, Webster and Wyoming.

(c) As established for use in the North Zone, the West Virginia Coordinate System of 1927 or the West Virginia Coordinate System of 1983 shall be named and in any land description in which it is used it shall be designated the West Virginia Coordinate System of 1927 North Zone or West Virginia Coordinate System of 1983 North Zone.

As established for use in the South Zone, the West Virginia Coordinate System of 1927 or the West Virginia Coordinate System of 1983 shall be named and in any land description in which it is used it shall be designated the West Virginia Coordinate System of 1927 South Zone or West Virginia Coordinate System of 1983 South Zone.

(d) The plane coordinate values for a point on the earth's surface, used to express the geographic position or location of the point in the appropriate zone of this system, shall consist of two distances, expressed in U. S. Survey feet and decimals of a foot when using the West Virginia Coordinate
LAND SURVEYORS

System of 1927 and determined in meters and decimals when using the West Virginia Coordinate System of 1983, but which may be converted to and expressed in feet and decimals of a foot. One of these distances, to be known as the x-coordinate, shall give the position in an east-and-west direction. The other, to be known as the y-coordinate, shall give the position in a north-and-south direction.

These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American Horizontal Geodetic Control Network as published by the National Ocean Survey/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors and whose plane coordinates have been computed on the system defined by this section. Any such station may be used for establishing a survey connection to either West Virginia Coordinate System.

(e) For purposes of describing the location of any survey station or land boundary corner in the State of West Virginia, it shall be considered a complete, legal and satisfactory description of the location to give the position of the survey station or land boundary corner on the system of plane coordinates defined in this section. Nothing contained in this section requires a purchaser or mortgagee of real property to rely wholly on a land description, any part of which depends exclusively upon either West Virginia Coordinate System.

(f) When any tract of land to be defined by a single description extends from one into the other of the coordinate zones specified in this section, the position of all points on its boundaries may refer to either of the two zones. The zone which is being used specifically shall be named in the description.

(g)(1) For purposes of more precisely defining the West Virginia Coordinate System of 1927, the following definition
by the United States Coast and Geodetic Survey (now National Ocean Survey/National Geodetic Survey) is adopted:

The West Virginia Coordinate System of 1927 North Zone is a Lambert conformal conic projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 39 degrees and 00 minutes and 40 degrees and 15 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 79 degrees 30 minutes west of Greenwich and the parallel 38 degrees 30 minutes north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

The West Virginia Coordinate System of 1927 South Zone is a Lambert conformal conic projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 37 degrees 29 minutes and 38 degrees 53 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 37 degrees 00 minutes north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) For purposes of more precisely defining the West Virginia Coordinate System of 1983, the following definition by the National Ocean Survey/National Geodetic Survey is adopted:

The West Virginia Coordinate System of 1983 North Zone is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 39 degrees and 00 minutes and 40 degrees and 15 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 79 degrees 30 minutes west of Greenwich and the parallel 38 degrees 30 minutes north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.
The West Virginia Coordinate System of 1983 South Zone is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 37 degrees 29 minutes and 38 degrees 53 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 37 degrees 00 minutes north latitude. This origin is given the coordinates: 
\[ x = 600,000 \text{ meters and } y = 0 \text{ meters}. \]

(h) No coordinates based on the West Virginia Coordinate System, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public records or deed records unless the point is based on a public or private monumented horizontal control station established in conformity with the standards of accuracy and specifications for first order or better geodetic surveying as prepared and published by the Federal Geodetic Control Committee of the United States Department of Commerce. Standards and specifications of the Federal Geodetic Control Committee or its successor in force on the date of the survey apply. The publishing of the existing control stations, or the acceptance with intent to publish the newly established control stations, by the National Ocean Survey/National Geodetic Survey is evidence of adherence to the Federal Geodetic Control Committee specifications. The limitations specified in this section may be modified by a duly authorized state agency to meet local conditions.

(i) The use of the term "West Virginia Coordinate System of 1927 North or South Zone" or "West Virginia Coordinate System of 1983 North or South Zone" on any map, report or survey or other document shall be limited to coordinates based on the West Virginia Coordinate System as defined in this section.

(j) A plat and a description of survey must show the basis of control identified by the following:
(1) The monument name or the point identifier on which the survey is based;

(2) The order of accuracy of the base monument; and

(3) The coordinate values used to compute the corner positions.

(k) Nothing in this section prevents the recordation in any public record of any deed, map, plat, survey, description or of any other document or writing of whatever nature which would otherwise constitute a recordable instrument or document even though the same is not based upon or done in conformity with the West Virginia Coordinate System established by this section, nor does nonconformity with the system invalidate any deed, map, plat, survey, description or other document which is otherwise proper.

(l) For purpose of this section a foot equals a United States Survey foot. The associated factor of one meter equals 39.37/12 feet shall be used in any conversion necessitated by changing values from meters to feet.

CHAPTER 132

(Com. Sub. for H.B. 4147 - By Delegates DeLong and Armstead)

[Passed February 7, 2008; in effect from passage.]
[Approved by the Governor on February 14, 2008.]

AN ACT to amend and reenact §5A-4-5 of the Code of West Virginia, 1931, as amended, relating to legislative parking at the State Capitol Complex; providing for a joint policy of the Speaker of the House of Delegates and the President of the State
Legislative Parking

Senate on parking; revising parking penalties to incorporate certain rules; allowing the Speaker of the House of Delegates and the President of the State Senate to designate other times and locations for legislative parking; and authorizing the Speaker of the House of Delegates and the President of the State Senate to designate persons for parking enforcement.

Be it enacted by the Legislature of West Virginia:

That §5A-4-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-5. Regulation of parking on state-owned or -leased property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

(a) It is the intent of the Legislature to provide a parking facility for the general public and to direct the Secretary of the Department of Administration to plan and construct a parking garage at the State Capitol Complex that will provide sufficient and additional parking for the general public.

(b) The secretary may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East;

(2) The west side of California Avenue between Kanawha Boulevard and Washington Street, East;

(3) Upon the state-owned or -leased grounds upon which state office buildings number one (1) through twenty (20) and the Laidley Field complex are located; and
(4) Upon any other property now or hereafter owned or leased by the state or any of its agencies and used for parking purposes in conjunction with the State Capitol or any state office buildings.

(c) The secretary shall propose legislative rules pursuant to article three, chapter twenty-nine-a of this code relating to parking and to also allocate parking spaces to public officers and employees of the state upon all of the property set forth in subsection (b) of this section: *Provided, That notwithstanding this or any other provision of law to the contrary, during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, and any other times designated by the Speaker of the House of Delegates and the President of the Senate, parking on the east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East, in the Science and Culture Center parking lot, on the north side of Kanawha Boulevard between Greenbrier Street and California Avenue and on the west side of California Avenue between Kanawha Boulevard and Washington Street, East, and any other areas designated by a joint policy of the Speaker of the House of Delegates and the President of the Senate shall be managed and controlled by the Legislature. Any person parking any vehicle contrary to this section or the rules promulgated under authority of this subsection is subject to a fine as established by rule of the secretary. In addition, a designee of the secretary or the Legislature, as the case may be, may cause the removal, immobilization or other remedy considered necessary, at owner expense, of any vehicle that is parked in violation of the rules or the joint policy between the Speaker of the House of Delegates and the President of the Senate. Magistrates in Kanawha County have jurisdiction of all the offenses.

(d) The secretary, the Speaker of the House of Delegates and the President of the Senate may employ persons as may be necessary to enforce the parking rules as provided for under the provisions of this section.
53 (e) There is created in the Department of Administration
54 a special fund to be named the "Parking Garage Fund" in
55 which shall be deposited funds that are appropriated and
56 funds from other sources to be used for the construction and
57 maintenance of a parking garage on the State Capitol
58 Complex.

CHAPTER 133

(Com. Sub. for S.B. 712 - By Senators Fanning and Foster)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §22-21-5 of the Code of West
Virginia, 1931, as amended, relating to authorizing the Coalbed
Methane Review Board to propose legislative rules.

Be it enacted by the Legislature of West Virginia:

That §22-21-5 of the Code of West Virginia, 1931, as amended,
be amended and reenacted, all to read as follows:

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-5. Duties of the Coalbed Methane Review Board;
meetings; notice, powers and duties generally.

1 (a) The board shall meet and hold conferences and
2 hearings at times and places designated by the chairman. The
3 chairman may call a meeting of the board at any time. The
4 chairman shall call a meeting of the board: (1) Upon receipt
5 from the chief of a completed application for a permit to
6 establish one or more coalbed methane gas drilling units


pursuant to this article; (2) upon receipt from the chief of a request pursuant to section seven of this article or comments or objections pursuant to sections ten and eleven of this article; or (3) within twenty days upon the written request by another member of the board. Notice of all meetings shall be given to each member of the board by the chairman at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of this section, the chairman shall also notify the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of section ten or eleven of this article.

(c) A majority of the members of the board constitute a quorum for the transaction of any business. A majority of the members of the board is required to determine any issue brought before it.

(d) The board shall execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the board has jurisdiction and authority over all persons and property necessary therefor: Provided, That the provisions of this article do not grant to the board authority or power to fix prices of coalbed methane gas.

(e) Within eighteen months of the effective date of this article, the board shall initiate rule-making proceedings to investigate the feasibility of establishing blanket bonds for financial security in addition to the provisions for bonds for financial security under section thirteen of this article.

(f) The board may:
(1) Take evidence and issue orders concerning applications for drilling permits and coalbed methane gas drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, and enforce reasonable rules necessary to govern the practice and procedure before the board;

(3) Propose legislative rules pursuant to the provisions of chapter twenty-nine-a of this code necessary to implement the powers and duties provided the board under this article, notwithstanding the provisions of subsection (b), section four of this article;

(4) Make relevant investigations of records and facilities it considers proper; and

(5) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents in its own name or at the request of any party pursuant to article five, chapter twenty-nine-a of this code.

CHAPTER 134

(Com. Sub. for H.B. 4209 - By Delegates Brown, Miley, Burdiss, Talbott and Overington)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the
promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; the promulgation of administrative rules by the Department of Administration and the procedures relating thereto legislative mandate or authorization; 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; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to the leasing of space and acquisition of real property on behalf of state spending units; authorizing the Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing the Department of Administration to promulgate a legislative rule relating to controlling the Public Land Corporation’s sale, lease, exchange or transfer of lands and minerals; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers’ Defined Contribution System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers’ Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employee’s Retirement System;
authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service and loan interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; and authorizing the Ethics Commission to promulgate a legislative rule relating to the solicitation and receipt of gifts and charitable contributions by public employees and officials.

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-seventh day of July, two thousand seven, authorized under the authority of section eleven, article ten, 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 second day of November, two thousand seven, relating to the Department of Administration (leasing of space and acquisition of real property on behalf of state spending units, 148 CSR 19), is authorized with the following amendment:

On page four, subdivision 5.3.b, at the beginning of the second line of the subdivision, by striking the words “limited liability company”;

On page four, following subsection 5.3.b, by inserting a new subsection 5.3.c as follows and relettering the remaining subdivisions:

“5.3.c. When the lessor is a limited liability company which is member managed, any member authorized to bind the limited liability company shall execute the lease. When the lessor is a limited liability company which is manager managed, the manager shall execute the lease on behalf of the limited liability company.”;
On page six, subdivision 9.8.a, at the beginning of the second line of the subdivision, by striking the words “limited liability company”; and

On page six, following subdivision 9.8.a, by inserting a new subdivision 9.8.a as follows and relettering the remaining subdivisions:

“9.8.a. When the seller is a limited liability company which is member managed, any member authorized to bind the limited liability company shall execute the contract. When the seller is a limited liability company which is manager managed, the manager shall execute the contract on behalf of the limited liability company.”.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section four, article three, chapter five-a, of this code, relating to the Department of Administration (leasing space on behalf of state spending units, 148 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section four, article eleven, chapter five-a, of this code, modified by the Department of Administration to meet the objections of the legislative rule-making review committee and refiled in the State Register on the twenty-first day of December, two thousand seven, relating to the Department of Administration (controlling the Public Land Corporation’s sale, lease, exchange or transfer of lands and minerals, 148 CSR 20), is authorized with the following amendment:

On page one, subsection 2.4, following the words “appraisal made by” by striking the remainder of the subsection and inserting in lieu thereof the words “the Real
Estate Division using the principles contained in the current Uniform Appraisal Standards for Federal Land Acquisitions published under the auspices of the Interagency Land Acquisition Conference” and a period;

On page one, subsection 2.5, by striking the subsection in its entirety and renumbering the remaining subsections;

On page one, subsection 2.7, following the words “Public Land Corporation”, by inserting the words “or corporation”;

On page one, subsection 2.8, following the word “be” by striking the word “the”;

On page one, subsection 2.8, following the word “appointed” by inserting the words “by the”; and

On page one, subdivision 3.1.a, at the end of the second line of the subdivision, by striking the word “independent”;

On page one, subdivision 3.1.b, on the sixth line of the subdivision, following words “shall be”, by striking the word “available” and inserting in lieu thereof the words “made available by the corporation”.


(a) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (general provisions, 162 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement
Board (benefit determination and appeal, 162 CSR 2), is
authorized with the following:

On page one, subsection 2.3, by striking out the language
of the subsection and inserting in lieu thereof the following:
“After a member receives either a lump sum distribution of
contributions or the initial payment of a retirement benefit
from the retirement system in which the member was or is a
participant, the member is not eligible to apply for or receive
disability retirement benefits.”;

On page one, subsection 3.1, line twelve, following the
word “physician”, by inserting the word “licensed”;

On page four, subsection 6.3, in the last sentence of the
subsection, by striking out the words “Consolidated Public
Retirement”;

And,

On page four, subsection 6.3, in the last line of the
subsection, following the word “Board”, by inserting the
word “staff”.

(c) The legislative rule filed in the State Register on the
twenty-fourth day of July, two thousand seven, 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.

(d) The legislative rule filed in the State Register on the
twenty-fourth day of July, two thousand seven, 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 with the following amendment:
On page seven, subsection 8.4, line three, following the words “calendar month”, by striking out the words “being reported” and inserting in lieu thereof the words “for which the payment is made”.

(e) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand seven, 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 second day of November, two thousand seven, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR 5), is authorized.

(f) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service and loan interest factors, 162 CSR 7), is authorized with the following amendment:

On page five, subsection 6.3, line three, following the words “calendar month”, by striking out the words “being reported” and inserting in lieu thereof the words “for which the payment is made”.

(g) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand seven, 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 fourth day of January, two thousand eight, relating to the Consolidated Public Retirement Board (West Virginia State Police, 162 CSR 9), is authorized.
(h) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10), is authorized.

*§64-9-3. Ethics Commission.*

The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section two, article two, chapter six-b, of this code, modified by the Ethics Commission to meet the objections of the legislative rule-making review committee and refiled in the State Register on the fifteenth day of January, two thousand eight, relating to the Ethics Commission (solicitation and receipt of gifts and charitable contributions by public employees and officials, 158 CSR 7), is authorized with the following amendments:

On page six, section six, by deleting subsections 6.8 and 6.9 in their entirety and inserting in lieu thereof the following:

"6.8. Fund-raising activities based on an exchange of value are not gift solicitations and are permissible."

On page six, section six by renumbering the remaining subsection;

On page six, section seven, subdivision 7.1.a., after the word "months" by adding the following:

"This subsection does not apply to purely law-enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other

*CLERK'S NOTE:* §64-2-3 was erroneously designated as §64-9-3 throughout the life of the bill (H.B. 4209) and, therefore, has been retained.
persons but merely enforce existing laws and rules as to all applicable persons”;

On page six, section seven, subsection 7.2., after the word “agency” by adding the following:

“This subsection does not apply to purely law enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other persons but merely enforce existing laws and rules as to all applicable persons”;

On page six, section seven, subsection 7.4, by deleting the words “or infer”;

On pages six and seven, section seven by deleting subsections 7.5 and 7.6 in their entirety;

On page seven, section eight, subsection 8.3, by deleting the subsection in its entirety and inserting in lieu thereof the following:

“8.3 Law-enforcement officers may not solicit for charity while in uniform except as otherwise provided for in this rule, but may show identification upon request.”;

On page seven, section eight, subsection 8.4, by deleting the comma and the words “employees or members of an association of law-enforcement officers” and inserting in lieu thereof the following words “or employees”; 

On pages seven and eight, section eight, subsection 8.5, by deleting the subsection in its entirety and inserting in lieu thereof the following:

“Law-enforcement officers or associations composed of law-enforcement officers may not provide signs, stickers,
decals or other items of display by individual donors showing whether or not a donation has been made on account of any charitable contribution solicited on behalf of law-enforcement officers or their association, unless the signs, stickers, decals or other items of display contain the following disclaimer: ‘The holder of this item is not entitled to any special treatment.’; Provided, That certificates, plaques or other items of display which are not intended for display on motor vehicles may be distributed to donors without the inclusion of the disclaimer; Provided, however, That an association may provide to its members who are currently serving as law-enforcement officers, or who previously served as law-enforcement officers, a sign, sticker, decal or other item of display, including those items intended for display in a motor vehicle, which demonstrate that a present or former law-enforcement officer is a member of an association or fraternal group primarily composed of law-enforcement officers, without the inclusion of the disclaimer.”;

On page eight, section eight, subsection 8.7, by deleting the subsection in its entirety and inserting in lieu thereof the following:

“8.7 Law-enforcement officers may not pick up a donation while in uniform except as otherwise provided for in this rule.”;

And,

On page eight, section eight, subsection 8.8, by deleting the words “such as a sale of baked goods or a car wash”.
AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing certain legislative rules; authorizing the Department of Environmental Protection to promulgate legislative rules relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the ambient air quality
standard for nitrogen dioxide; authorizing the Department of Environmental Protection to repeal a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the prevention and control of emissions from hospital/medical/infectious waste incinerators; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual sulfur dioxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to greenhouse gas emissions inventory program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of refuse; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to repeal a legislative rule relating to ambient air quality standards for carbon monoxide and ozone; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining blasting; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and development; authorizing the Department of
Environmental Protection to promulgate a legislative rule relating to environmental excellence program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards for the beneficial use of filtrate from water treatment plants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Recycling Assistance Grant Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to underground storage tanks; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to WV/NPDES rules for coal mining facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to antidegradation implementation procedures; and authorizing the Solid Waste Management Board to promulgate a legislative rule relating to performance measures and review standards for solid waste authorities operating commercial solid waste facilities.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931 as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.
§64-3-2. Solid Waste Management Board.
§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants 45 CSR 34), is authorized.

(b) The legislative rule filed in the State Register on the nineteenth day of December, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (ambient air quality standard for nitrogen dioxide, 45 CSR 12), is repealed.

(c) The legislative rule filed in the State Register on the nineteenth day of December, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants pursuant to 40 CFR part 61, 45 CSR 15), is repealed.

(d) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources 45 CSR 16), is authorized.

(e) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.
(f) The legislative rule filed in the State Register on the nineteenth day of December, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (to prevent and control emissions from hospital/medical/infectious waste incinerators, 45 CSR 24), is repealed.

(g) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage and disposal facilities, 45 CSR 25), is authorized.

(h) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of annual nitrogen oxides emissions, 45 CSR 39), is authorized.

(i) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of January, two thousand eight, relating to the Department of Environmental Protection (control of ozone season nitrogen oxides emissions, 45 CSR 40), is authorized.

(j) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter
(k) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section nineteen, article five, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of January, two thousand eight, relating to the Department of Environmental Protection (greenhouse gas emissions inventory program, 45 CSR 42), is authorized.

(l) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from combustion of refuse, 45 CSR 6), is authorized.

(m) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of January, two thousand eight, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 8), is authorized.

(n) The legislative rule filed in the State Register on the nineteenth day of December, two thousand seven, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of
Environmental Protection (ambient air quality standards for carbon monoxide and ozone, 45 CSR 9), is repealed.

(o) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article three-a, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of December, two thousand seven, relating to the Department of Environmental Protection (surface mining blasting, 199 CSR 1), is authorized, with the following amendments:

On page nine, section 3, after “3.8.a.” by inserting the following: At least thirty days prior to commencing blasting, an operator’s designee shall notify in writing all owners and occupants of man-made dwellings or structures that the operator or operator’s designee will perform preblast surveys.

(p) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article three, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of December, two thousand seven, relating to the Department of Environmental Protection (surface mining reclamation, 38 CSR 2), is authorized with the following amendments:

On pages one hundred twenty-six through one hundred thirty-two, by striking out subsection 11.8. in its entirety.

(q) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section three, article twenty-two, chapter twenty-two of this code, relating to the Department
of Environmental Protection (voluntary remediation and
development, 60 CSR 3), is authorized.

(r) The legislative rule filed in the State Register on the
twenty-seventh day of July, two thousand seven, authorized
under the authority of section four, article twenty-five,
chapter twenty-two of this code, relating to the Department
of Environmental Protection (environmental excellence
program, 60 CSR 8), is authorized.

(s) The legislative rule filed in the State Register on the
twenty-fourth day of July, two thousand seven, authorized
under the authority of section twenty-three, article fifteen,
chapter twenty-two of this code, modified by the Department
of Environmental Protection to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on the twentieth day of December, two
thousand seven, relating to the Department of Environmental
Protection (standards for beneficial use of filtrate from water
treatment plants, 33 CSR 9), is authorized.

(t) The legislative rule filed in the State Register on the
twenty-seventh day of July, two thousand seven, authorized
under the authority of section three, article fifteen-a, chapter
twenty-two of this code, modified by the Department of
Environmental Protection to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on the seventeenth day of October, two
thousand seven, relating to the Department of Environmental
Protection (recycling assistance grant program, 33 CSR 10),
is authorized with the following amendments:

On page twelve, subdivision 5.1.10., after the words
"telephone costs." by striking out the remainder of the
subdivision and by inserting in lieu thereof the following:
"Rent or lease charges related to a recycling program for a
building, or office space are allowable expenditures.
However, to obtain grant funds for rent or lease charges, the
applicant shall provide the department with a copy of the written rental or lease agreement which shall exceed twenty years and meet the following criteria:

a. The rental or lease agreement shall not contain any cancellation or termination clause,

b. The rental or lease agreement shall not be transferrable, and

c. The rental or lease agreement shall not allow for subleasing;”

On page twelve, by striking out all of subdivision 5.1.11. and inserting in lieu thereof the following, to read as follows:

“5.1.11 Recycling Facility Construction, Improvement and Repairs -- A grant may be used for, but not limited to, new construction or repairs or minor improvements to an existing recycling facility, such as loading docks, sheds, structures, abutment walls, fences, roof repair, gravel or paving, if the land is owned or leased by the grantee. However, to obtain grant funds for construction, improvements and repairs for rental or leased property, the applicant shall provide the department a copy of the written rental or lease agreement which shall exceed twenty years and meet the criteria stated in subdivision 5.1.10. of this rule;”

On page thirteen, subdivision 5.2.2., by striking out the words “and buildings”;

And,

On page thirteen, subdivision 5.2.7 after the words “(planting, mowing, weeding, etc.)” by inserting the words “unless the purpose is to provide natural screening to neighboring properties”.
(u) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(v) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section six, article seventeen, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of December, two thousand seven, relating to the Department of Environmental Protection (underground storage tanks, 33 CSR 30), is authorized.

(w) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section four, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (National Pollutant Discharge Elimination System (NPDES) program, 47 CSR 10), is authorized.

(x) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article eleven, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of December, two thousand seven, relating to the Department of Environmental Protection (WV/NPDES rules for coal mining facilities, 47 CSR 30), is authorized with the following amendments:
On page one, subsection 1.8., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page two, subsection 2.6., by striking out the word “Secretary’s” and inserting in lieu thereof the word “Director’s”;

On page two, subsection 2.6., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page three, after subsection 2.14. by inserting a new subsection 2.15., to read as follows:

2.15. “Director” means the director of the Division of Water and Waste Management.;

And renumbering the remaining subsections;

On page three, subsection 2.17., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page three, subsection 2.18., by striking out the word “Secretary’s” and inserting in lieu thereof the word “Director’s”;

On page four, subsection 2.28., after the words “by the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page four, subsection 2.28., after the words “with the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page four, subdivision 2.31.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page five, subsection 2.37., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page six, subsection 2.50., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page six, subsection 2.51., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page six, subparagraph 3.1.a.6.D, by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page seven, subparagraph 3.1.a.6.G, after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page seven, subparagraph 3.1.a.6.G, after the words “when the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page seven, subdivision 3.2.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page eight, subdivision 3.5.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page eight, subdivision 3.5.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page eight, paragraph 3.5.b.1., after the words “to the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page eight, paragraph 3.5.b.1., after the words “application the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page eight, paragraph 3.5.b.1., after the words “if the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page eight, paragraph 3.5.b.2., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page eight, paragraph 3.5.c.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page eight, paragraph 3.5.d.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page eight, paragraph 3.5.d.3., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page nine, subsection 3.6., by striking out the word “Secretary” and inserting in lieu thereof the words “Director of the Division of Water and Waste Management”;  

On page nine, subdivision 3.6.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page nine, subdivision 3.6.b., after the words “adopted by the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;  

On page nine, subdivision 3.6.b., after the words “enforced by the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page nine, subdivision 3.6.c., after the word "The" by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page nine, subdivision 3.6.c., after the words "by the" by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page nine, subdivision 3.6.d., by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page nine, subsection 4.1., by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page nine, subsection 4.2., after the word "The" by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page nine, subsection 4.2., after the words "or the" by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page nine, subsection 4.3., by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page ten, subsection 4.3., after the words "when the" by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page ten, subsection 4.3., after the words "to the" by striking out the word "Secretary" and inserting in lieu thereof the word "Director";

On page ten, subsection 4.3., after the word "The" by striking out the word "Secretary" and inserting in lieu thereof the word "Director";
On page ten, subdivision 4.5.a., after the words “provide the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page ten, subdivision 4.5.a., after the words “by the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twelve, paragraph 4.5.a.17., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twelve, paragraph 4.5.a.17., after the words “and the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twelve, subdivision 4.5.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twelve, paragraph 4.5.b.1., after the words “addition, the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twelve, paragraph 4.5.b.1., after the words “effluents, the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twelve, part 4.5.b.1.A.2., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page fourteen, paragraph 4.5.c.1., after the words “to the” by striking out the comma and the word “Secretary” and inserting in lieu thereof the word “Director”;

On page fourteen, paragraph 4.5.c.1., after the words “as the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page fourteen, paragraph 4.5.d.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page fifteen, subparagraph 4.5.d.1.F., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page fifteen, paragraph 4.5.d.3., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page sixteen, paragraph 4.5.e.3., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page sixteen, subparagraph 4.5.f.2.A., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page seventeen, paragraph 4.5.g.1., after the words “rule, the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page seventeen, paragraph 4.5.g.1., after the words “notice, the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page seventeen, paragraph 4.5.g.2., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page seventeen, subdivision 4.7.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page eighteen, paragraph 4.7.b.3., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page eighteen, subdivision 4.7.c., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page nineteen, subdivision 5.1.g., by striking out the word “secretary” and inserting in lieu thereof the words “Secretary or Director”;

On page nineteen, subsection 5.7., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page nineteen, subsection 5.9., after the words “shall furnish to the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page nineteen, subsection 5.9., after the words “which the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page nineteen, subsection 5.9., after the words “shall also furnish to the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page nineteen, subsection 5.10., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty, subdivision 5.11.c., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty, paragraph 5.11.d.7., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty, subdivision 5.11.g., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page twenty, subsection 5.12., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-one, subdivision 5.13.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-one, subdivision 5.13.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-one, subparagraph 5.13.d.2.B., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-one, subparagraph 5.13.d.2.C., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-one, paragraph 5.13.d.3., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-one, paragraph 5.13.d.4., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-two, part 5.13.d.4.A.4., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-two, part 5.13.d.4.B.4., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-two, subdivision 5.13.f., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page twenty-two, subdivision 5.13.g., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-three, paragraph 5.14.d.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-three, subdivision 5.14.e., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-three, subdivision 5.14.e., after the words “if the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-three, subsection 5.16., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-five, subsection 6.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-five, subdivision 6.1.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-five, subdivision 6.2.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-five, paragraph 6.2.d.2., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page twenty-six, paragraph 6.2.d.3., after the words “Subpart G, the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page twenty-six, subparagraph 6.2.h.1.A., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page twenty-six, subparagraph 6.2.h.2.B., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page twenty-six, subdivision 6.2.i., by striking out the word “Secretary’s” and inserting in lieu thereof the word “Director’s”; 

On page twenty-eight, paragraph 6.2.o.5., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page twenty-nine, subdivision 7.7.d., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty, subdivision 7.9.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty, subdivision 8.1.a., by striking out the word “Secretary’s” and inserting in lieu thereof the word “Director’s”; 

On page thirty, subdivision 8.1.a., after the words “to the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty, subdivision 8.1.a., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty, subdivision 8.1.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page thirty, subdivision 8.2.a., after the words “to the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty, subdivision 8.2.a., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-one, subdivision 8.2.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-one, paragraph 8.2.c.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-one, subparagraph 8.2.c.1.D., after the words “where the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-one, subparagraph 8.2.c.1.D., after the words “by the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-one, subparagraph 8.2.c.1.D., after the words “to the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-two, subparagraph 8.2.c.2.B., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-two, subparagraph 8.2.c.2.D., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-three, subparagraph 8.2.c.2.L., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-two, subparagraph 8.2.c.2.B., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-three, subparagraph 8.2.c.2.L., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page thirty-three, paragraph 8.3.a.1., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-three, paragraph 8.3.a.1., after the words “and the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-three, paragraph 8.3.c.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-four, subdivision 9.1.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-four, subdivision 9.2.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-four, paragraph 9.2.a.2., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-four, subdivision 9.2.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-five, subdivision 10.1.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-five, subdivision 10.1.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”; 

On page thirty-five, subdivision 10.2.b., after the word “the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page thirty-five, subdivision 10.2.b., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-five, subdivision 10.2.c., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-six, subparagraph 10.2.d.1.B., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-six, paragraph 10.2.d.2, by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-seven, subparagraph 10.2.e.1.G., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-seven, subdivision 10.3.a., after the word “the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-seven, subdivision 10.3.a., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-seven, subdivision 10.4.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-seven, subdivision 10.5.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-eight, subdivision 10.5.a., after the words “advises the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page thirty-eight, subdivision 10.5.a., after the words “then the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-eight, subdivision 10.5.b., after the words “advises the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-eight, subdivision 10.5.b., after the words “resources, the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-eight, subdivision 10.5.c., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-eight, subdivision 11.1.d., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page thirty-eight, subdivision 11.1.e., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty, paragraph 12.3.a.3., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-one, subsection 13.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-one, paragraph 13.1.b.5. by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-one, subdivision 13.1.c., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page forty-one, subdivision 13.2.b., after the word “The” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-one, subdivision 13.2.b., after the word “the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subsection 14.1., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subdivision 14.1.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subdivision 14.1.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subdivision 14.1.c., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subdivision 14.2.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subdivision 14.2.b., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subdivision 14.2.c., after the words “by the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-two, subdivision 14.2.c., after the words “variance, the” by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;
On page forty-two, subdivision 15.1.a., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

On page forty-three, subsection 15.2., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”;

And,

On page forty-three, subdivision 15.2.c., by striking out the word “Secretary” and inserting in lieu thereof the word “Director”.

(y) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section seven-b, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 2), is authorized, with the following amendments:

On page two, by striking out subsection 2.20. “Waters of special concern” in its entirety and renumbering the remaining subsections;

On page four, by striking out subdivision 4.1.c. in its entirety and renumbering the remaining subdivisions;

And,

On page four, newly designated 4.1.c. after the word “State”, by changing the period to a comma and adding the following: all Federally designated rivers under the “Wild and Scenic Rivers Act”, 16 U.S.C. §1271 et seq.; all streams and other bodies of water in state parks which are high quality waters or naturally reproducing trout streams; waters in national parks and forests which are high quality waters or
naturally reproducing trout streams; waters designated under the “National Parks and Recreation Act of 1978", as amended; and pursuant to subsection 7.1. of 60CSR5, those waters whose unique character, ecological or recreational value, or pristine nature constitutes a valuable national or state resource.;

And,

On pages sixteen through twenty-six by striking Appendix A and inserting in lieu thereof the following:

**APPENDIX A**

**CATEGORY B-2 - TROUT WATERS**

This list contains known trout waters and is not intended to exclude any waters which meet the definition in Section 2.20-2.19.

<table>
<thead>
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<th>River Basin</th>
<th>County</th>
<th>Stream</th>
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<td>James River</td>
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<td>P</td>
<td>Jefferson</td>
<td>Town Run</td>
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<td>P</td>
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<td>Rocky Marsh Run</td>
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<td>P</td>
<td>Berkeley</td>
<td>Opequon Creek</td>
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<td>P</td>
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<td>Greenbrier River</td>
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<tr>
<td>957</td>
<td></td>
<td>(Above Hosterman)</td>
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<tr>
<td>958</td>
<td>KNG &quot;</td>
<td>West Fork-Greenbrier</td>
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<td>959</td>
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<td>River (Above the</td>
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<td>960</td>
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<td>impoundment at the</td>
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<td>961</td>
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<td>tannery)</td>
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<td>962</td>
<td>KNG &quot;</td>
<td>Little River-EastFork</td>
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<td>963</td>
<td>KNG &quot;</td>
<td>Little River-WestFork</td>
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<tr>
<td>964</td>
<td>KNG &quot;</td>
<td>Five Mile Run</td>
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<td>965</td>
<td>KNG &quot;</td>
<td>Mullenax Run</td>
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<td>966</td>
<td>KNG &quot;</td>
<td>Abes Run</td>
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<td>967</td>
<td>KNB Mercer</td>
<td>Marsh Fork</td>
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<td>968</td>
<td>KNB &quot;</td>
<td>Camp Creek</td>
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<td>969</td>
<td>OG Wyoming</td>
<td>Pinnacle creek</td>
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<td>970</td>
<td>BST McDowell</td>
<td>Dry Fork (Above</td>
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<tr>
<td>971</td>
<td></td>
<td>Canebrake)</td>
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</table>

(z) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized
under the authority of section seven-b, article eleven, chapter
twenty-two of this code, relating to the Department of
Environmental Protection (antidegradation implementation
procedures, 60 CSR 5), is authorized with the amendment set
forth below:

On page two, subsection 3.2. by striking out the words
"Tier 2.5 or";

On page three, by striking out subdivision 3.5.a. in its
entirety and by renumbering the remaining subdivisions;

On page three, new subdivision 3.5.a., after the words
"Wilderness Area" by inserting the words "or otherwise
included in 47CSR2-4.1.c.”;

On page three, new subdivision 3.5.b., after the words
"Wilderness Area" by striking out the words "not listed
pursuant to subsection 8.2. and not listed in Appendix A of
this rule” and inserting in lieu thereof, the words “or
otherwise included in 47CSR2-4.1.c. or listed pursuant to
subsection 7.1. of this rule”;

On page three, new subdivision 3.5.d. by striking out the
words “Tier 2.5 or”;

On page three, subsection 3.7. by striking out the words
"Tier 2.5 or”;

On page four, subsection 3.8., by striking out the words
"Tier 2.5 or”;

On pages nine through eleven, by striking out section six
in its entirety and renumbering the remaining sections;

On page eleven, subsection 7.2., by striking out
"47CSR2-4.1.d.” and inserting in lieu thereof the words
"47CSR2-4.1.c.”;
On page thirteen, by striking out the section caption and inserting in lieu thereof a new section caption to read as follows:

§60-5-7. Designation of Tier 3 Waters;

On pages thirteen and fourteen, by striking out section 8.1. in its entirety and renumbering the remaining subsection;

On page fourteen, new subsection 7.2.a.1., following the words “nominated segment.” by striking out the word “Where” and inserting in lieu thereof, the following: When a good faith effort to notify individual property owners has failed, and”.

On page fifteen, subsection 9.3. by striking out the words “2.5,”;

On page fifteen, subsection 9.6, after the word “Board”, by striking out the colon and the remainder of the subsection;

On pages sixteen through twenty-one by striking out Appendix A in its entirety;

And,

On page twenty-two by striking out the caption and inserting in lieu thereof the caption “APPENDIX A”.

§64-3-2. Solid Waste Management Board.

The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand seven, authorized under the authority of section nine-a, article four, chapter twenty-two-c of this code, modified by the Solid Waste Management Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand seven,
relating to the Solid Waste Management Board (performance measures and review standards for solid waste authorities operating commercial solid waste facilities, 54 CSR 6), is authorized.

CHAPTER 136

(Com. Sub. for S.B. 398 - By Senators Minard, Fanning, Prezioso, Unger, Boley and Facemyer)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

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; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to
water wells; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to water well design standards; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospice licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the regulation of opioid treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the newborn screening system; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clandestine drug laboratory remediation; and authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services.

Be it enacted by the Legislature of West Virginia:

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

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

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

1 (a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Department of Health and Human Resources (food establishments, 64 CSR 17), is authorized.
(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 nineteenth day of December, two thousand seven, relating to the Department of Health and Human Resources (water wells, 64 CSR 19), is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Department of Health and Human Resources (water well design standards, 64 CSR 46), is authorized.

(d) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section five, article five-I, 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 sixth day of December, two thousand seven, relating to the Department of Health and Human Resources (hospice licensure, 64 CSR 54), is authorized.

(e) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 sixth day of December, two
thousand seven, relating to the Department of Health and Human Resources (regulation of opioid treatment programs, 64 CSR 90), is authorized.

(f) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section three, article twenty-two, 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 seventh day of December, two thousand seven, relating to the Department of Health and Human Resources (newborn screening system, 64 CSR 91), is authorized.

(g) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section three, article eleven, 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 seventh day of December, two thousand seven, relating to the Department of Health and Human Resources (clandestine drug laboratory remediation, 64 CSR 92), is authorized.

(h) 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, authorized for promulgation by the Legislature on the tenth day of March two thousand seven, and refiled in the state register on the eighteenth day of April, two thousand seven, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized with the following amendment:

On page eighteen, by striking out all of subparagraph 9.1.a.2.B. and renumbering the remaining subparagraphs.
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 the State Fire Marshal to promulgate a legislative rule relating to the supervision of fire protection work; authorizing the Regional Jail and Correctional Facility Authority to promulgate a legislative rule relating to a furlough program for regional jails; authorizing the Regional Jail and Correctional Facility Authority to promulgate a legislative rule relating to a work program for regional jail
inmates; authorizing the State Police to promulgate a legislative rule relating to cadet selection; authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Career Progression System; and authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police professional standards investigations, employee rights, early identification system, psychological assessment and progressive discipline.

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. State Fire Marshal.
§64-6-2. Regional Jail and Correctional Facility Authority.
§64-6-3. State Police.

§64-6-1. State Fire Marshal.

1 The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section four, article three-d, chapter twenty-nine of this code, modified by the State Fire Marshal 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 eight, relating to the State Fire Marshal (supervision of fire protection work, 103 CSR 3), is authorized with the following amendment:

10 On page one, by striking out subsections 3.4 and 3.5 in their entirety and renumbering the remaining subsections accordingly;
On page two, by striking out subsections 3.11, 3.12 and 3.13 in their entirety and renumbering the remaining subsections accordingly;

On page five, by striking out subsections 7.2 through 7.6 in their entirety and renumbering the remaining subsections accordingly; and

On page nine, by striking out subsections 13.3 through 13.7 in their entirety and renumbering the subsection accordingly.

§64-6-2. Regional Jail and Correctional Facility Authority.

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section twenty-nine, 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 third day of January, two thousand eight, relating to the Regional Jail and Correctional Facility Authority (furlough program for regional jails, 94 CSR 6), is authorized.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section thirty-one, 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 third day of January, two thousand eight, relating to the Regional Jail and Correctional Facility Authority (work program for regional jail inmates, 94 CSR 8), is authorized.
§64-6-3. State Police.

(a) The legislative rule filed in the State Register on the seventeenth day of July, two thousand seven, authorized under the authority of section twenty-five, article two, chapter fifteen of this code, modified by the State Police to meet the objections of the legislative rule-making review committee and refiled in the State Register on the twenty-ninth day of August, two thousand seven, relating to the State Police (cadet selection, 81 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on the twenty-fifth day of June, two thousand seven, authorized under the authority of section five, article two, chapter fifteen of this code, modified by the State Police to meet the objections of the legislative rule-making review committee and refiled in the State Register on the eleventh day of October, two thousand seven, relating to the State Police (West Virginia State Police Career Progression System, 81 CSR 3), is authorized with the amendments set forth below:

On page four, subdivision 4.1.1.a, by striking “seven (7)” and inserting in lieu thereof the words “nine (9)”;

On page four, subdivision 4.1.1.b, following the word “sergeants” on the first line of the subdivision by inserting a comma and the words “that have at least one year in the present rank” and a comma;

On page four, subdivision 4.1.1.c, following the word “sergeants” by inserting a comma and the words “that have at least one year in the present rank” and a comma;

On page four, paragraph 4.1.1.c, by deleting the following words: “Effective July 1, 2012 and continuing thereafter, a first sergeant must possess a post-secondary education bachelor’s degree in order to be eligible for
promotion to the rank of second lieutenant or first lieutenant.”;

On page four, subdivision 4.2.2.d, following the words “bachelor’s degree - “ by striking the words “two (2)” and inserting in lieu thereof “one (1)”;

On page four, subdivision 4.2.2.d, following the words “master’s degree - “ by striking the words “three(3)” and inserting in lieu thereof “one and one half (1.5)”;

On page four, subdivision 4.2.2.d, following the words “PHD“ by striking the words “four (4)” and inserting in lieu thereof “two (2)”;

On page six, following subdivision 4.5.2, by inserting “The 34% removed members shall be done at the end of the ordered promotional list or prior to the oral evaluation whichever the Superintendent chooses.”

And,

On page eleven, On page four, subdivision 7.1.5. by deleting the following words: “Effective July 1, 2012 and continuing thereafter, a member must possess a post-secondary education bachelor’s degree in order to be eligible for reclassification to administrative support specialist VII or VIII.”.

(c) The legislative rule filed in the State Register on the twenty-fifth day of June, two thousand seven, authorized under the authority of section twenty-five, article two, chapter fifteen of this code, relating to the State Police (West Virginia State Police professional standards investigations, employee rights, early identification system, psychological assessment and progressive discipline, 81 CSR 10), is authorized.
AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, 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; 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 Alcohol Beverage Control Commission to promulgate a legislative rule relating to retail licensee operations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to farm wineries; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the sale of wine; authorizing the Insurance Commissioner to promulgate a legislative rule relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mental
health parity; authorizing the Insurance Commissioner to promulgate a legislative rule relating to recognition of preferred mortality tables for use in determining minimum reserve liabilities; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the replacement of life insurance policies and annuity contracts; authorizing the Insurance Commissioner to promulgate a legislative rule relating to military sales practices; authorizing the Insurance Commissioner to promulgate a legislative rule relating to suitability in annuity transactions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to life insurance disclosures; authorizing the Insurance Commissioner to promulgate a legislative rule relating to life insurance illustrations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to examiner and examinations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the licensing and conduct of insurance producers, agencies and solicitors; authorizing the Insurance Commissioner to promulgate a legislative rule relating to fingerprinting requirements for applications for an insurance producer license; authorizing the Insurance Commissioner to promulgate a legislative rule relating to advertisement of life insurance and annuities; authorizing the Lottery Commission to promulgate a legislative rule relating to racetrack table games; and authorizing the State Tax Division to promulgate a legislative rule relating to the exchange of information agreement between the Commissioner of the Tax Division of the Department of Revenue and the Commissioner of the Division of Labor of the Department of Commerce, the Commissioner of the Insurance Commission of the Department of Revenue, the Commissioner of the Division of Motor Vehicles of the Department of Transportation, the Commissioner of the Bureau of Employment Programs and the Office of the Governor.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

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

§64-7-2. Insurance Commissioner.

§64-7-3. Lottery Commission.

§64-7-4. State Tax Department.

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

1 (a) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section six, article three-a, chapter sixty of this code, modified by the Alcohol Beverage Control Commission 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 eight, relating to the Alcohol Beverage Control Commission (retail licensee operations, 175 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section twenty-three, article eight, chapter sixty of this code, modified by the Alcohol Beverage Control Commission 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 eight, relating to the Alcohol Beverage Control Commission (farm wineries, 175 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand seven, authorized under the authority of section six, article three-a, chapter sixty of this code, modified by the Alcohol Beverage Control Commission 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 eight, relating to the Alcohol Beverage Control Commission (sale of wine, 175 CSR 4), is authorized.
§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (guaranteed loss ratios as applied to individual sickness and accident insurance policies, 114 CSR 31), is authorized.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (mental health parity, 114 CSR 64), is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (recognition of preferred mortality tables for use in determining minimum reserve liabilities, 114 CSR 69A), is authorized.

(d) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (replacement of life insurance policies and annuity contracts, 114 CSR 8), is authorized.
(e) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (military sales practices, 114 CSR 82), is authorized.

(f) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (suitability in annuity transactions, 114 CSR 11B), is authorized.

(g) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (life insurance disclosures, 114 CSR 11A), is authorized.

(h) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (life insurance illustrations, 114 CSR 11C), is authorized with the following amendment:
On page 17, section 11, by striking section 11 in its entirety and inserting in lieu thereof the following:

§114-11C-11. Failure to comply.

A violation of paragraphs 5.2 or 5.3, section 5 of this rule by an insurer constitutes a statement or omission which misrepresents the benefits, advantages, conditions or terms of a life insurance policy.'.

(i) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (licensing and conduct of insurance producers, agencies and solicitors, 114 CSR 2), is authorized.

(j) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (licensing and conduct of insurance producers, agencies and solicitors, 114 CSR 2), is authorized.

(k) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 seventh day of December, two thousand seven, relating to the Insurance Commissioner (fingerprinting requirements for applications for insurance producer license, 114 CSR 2A), is authorized.

(l) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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
§64-7-3. Lottery Commission.

1 The legislative rule filed in the State Register on the
twenty-seventh day of July, two thousand seven, authorized
under the authority of section four, article twenty-two-c,
chapter twenty-nine of this code, modified by the Lottery
Commission to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register
on the twenty-sixth day of December, two thousand seven,
relating to the Lottery Commission (racetrack table games,
179 CSR 8), is authorized with the following amendments:

10 On page twelve, by striking out subsection 2.65 in its
entirety;

12 On page fifteen, by striking subsection 3.11 in its entirety
and renumbering the subsequent subsections accordingly;

14 On page seventeen, by striking out section 179-8-9 in its
entirety and renumbering the subsequent sections
accordingly;

17 And,

18 On page ninety-four, section one hundred ten, by striking
out the words ‘section eleven’ and inserting in lieu thereof
the words ‘sections one hundred fourteen through one
hundred twenty-six’.

§64-7-4. State Tax Department.

1 The legislative rule filed in the State Register on the
twenty-seventh day of July, two thousand seven, authorized
under the authority of section five-s, article ten, chapter
eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-ninth day of December, two thousand seven, relating to the State Tax Department (exchange of information agreement between the Commissioner of the Tax Division of the Department of Revenue and the Commissioner of the Division of Labor of the Department of Commerce, the Commissioner of the Insurance Commission of the Department of Revenue, the Commissioner of the Division of Motor Vehicles of the Department of Transportation, the Commissioner of the Bureau of Employment Programs and the Office of the Governor, 110 CSR 50D), is authorized.

CHAPTER 139

(Com. Sub. for H.B. 4244 - By Delegates Brown, Miley, Burdiss, Talbott and Overington)

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 15, 2008.]

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 Commissioner of Highways to promulgate a legislative rule relating to the construction and reconstruction of state roads; authorizing the Commissioner of Highways to promulgate a legislative rule relating to traffic and safety rules; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the examination and issuance of driver’s licenses; and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the disclosure of information from the files of the division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR 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-seventh day of July, two thousand seven, authorized under the authority of section eight, article two-a, chapter seventeen, of this code, modified by the Commissioner of Highways to meet the objections of the Legislative Rule-
§64-8-2. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand seven, authorized under the authority of section five, article two, chapter seventeen-b, 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 twentieth day of December, two thousand seven, relating to the Division of Motor Vehicles (examination and
issuance of driver’s licences, 91 CSR 4), is authorized with the following amendment:

On page 3, paragraph 3.9, after the words “address of the applicant’s”, by striking the word “principle” and inserting in lieu thereof the word “principal”;

And,

On page 3, by striking out subdivision 3.9.a. in its entirety, and inserting in lieu thereof the following:

“3.9.a. An applicant who can verify that his or her principal residence is physically located in West Virginia but who has no fixed or designated address to which mail can be delivered by the United States Postal Service and who must use another address for purposes of receiving mail;”.

(b) The legislative rule filed in the State Register on the first day of November, two thousand seven, authorized under the authority of section twelve, article two-a, chapter seventeen-b, of this code, relating to the Division of Motor Vehicles (the disclosure of information from the files of Division of Motor Vehicles, 91 CSR 8), is authorized.

CHAPTER 140
(Com. Sub. for S.B. 349 - By Senators Minard, Fanning, Prezioso, Unger, Boley and Facemyer)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the
promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Acupuncture to promulgate a legislative rule relating to disciplinary and complaint procedures for acupuncturists; authorizing the Board of Acupuncture to promulgate a legislative rule relating to continuing education requirements; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the fee structure for the Pesticide Control Act of 1990; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the West Virginia Plant Pest Act; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to frozen desserts and imitation frozen desserts; authorizing the State Auditor to promulgate a legislative rule relating to standards for requisitions for payment issued to state officers on the Auditor; authorizing the State Auditor to promulgate a legislative rule relating to the State Purchasing Card Program; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the board; authorizing the State Election Commission to promulgate a legislative rule relating to corporate political activity; authorizing the State Election Commission to promulgate a legislative rule relating to the regulation of campaign finance; authorizing the State Election Commission to promulgate a
legislative rule relating to election expenditures; authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to funeral director, embalmer, apprentice, courtesy card holder and funeral establishment requirements; authorizing the Board of Hearing Aid Dealers to promulgate a legislative rule relating to the board; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to the board; authorizing the Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to continuing education; authorizing the Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to a standard of ethics; authorizing the Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatrists; authorizing the Board of Medicine to promulgate a legislative rule relating to collaborative pharmacy practice; authorizing the Board of Medicine to promulgate a legislative rule relating to certification, disciplinary and complaint procedures, continuing education and radiologist assistants; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Pharmaceutical Cost Management Council to promulgate a legislative rule relating to prescription drug advertising expense reporting; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to fees for surveyors and surveying firms; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to standards for the practice of surveying in West Virginia; authorizing the Public Service Commission to promulgate a legislative rule relating to emergency telephone service; authorizing the Secretary of State to promulgate a legislative rule relating to the use of digital signatures, state certificate authority and the state repository; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to
promulgate a legislative rule relating to the licensure of speech-pathology and audiology; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians.

Be it enacted by the Legislature of West Virginia:

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

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

§64-9-1. Board of Acupuncture.
§64-9-4. Board of Dental Examiners.
§64-9-7. Board of Hearing Aid Dealers.
§64-9-10. Board of Medicine.
§64-9-15. Secretary of State.
§64-9-17. Board of Veterinary Medicine.

§64-9-1. Board of Acupuncture.

(a) The legislative rule filed in the State Register on the seventeenth day of July, two thousand seven, authorized under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of November, two thousand seven, relating to the Board of Acupuncture (disciplinary and complaint procedures for
acupuncturists, 32 CSR 7), is authorized with the following amendments:

On page one, by striking out subsection 3.7. and renumbering the remaining subsection;

And,

On page seven, section five, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

§32-7-5. Complaint Disposition.

(b) The legislative rule filed in the State Register on the seventeenth day of July, two thousand seven, authorized under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of November, two thousand seven, relating to the Board of Acupuncture (continuing education requirements, 32 CSR 9), is authorized with the following amendment:

On page two, subsection 5.2., after the word ‘shall’ by inserting the word ‘assign’;

And,

On page three, subsection 7.1., by striking out the word “fourty-eight” and inserting in lieu thereof the word “forty-eight”.


(a) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand seven, authorized
under the authority of section four, article sixteen-a, chapter
nineteen of this code, relating to the Commissioner of
Agriculture (fee structure for the Pesticide Control Act of
1990, 61 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on the
twenty-ninth day of June, two thousand seven, authorized
under the authority of section five, article two-c, 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-eighth day of August, two thousand seven,
relating to the Commissioner of Agriculture (auctioneers, 61
CSR 11B), is authorized with the following amendment:

On page one, subsection 3.1., by striking out the word
‘applicant’s’ and inserting in lieu thereof the word
‘applicant’.

(c) The legislative rule filed in the State Register on the
twenty-seventh day of July, two thousand seven, 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-seventh day of August, two thousand seven,
relating to the Commissioner of Agriculture (West Virginia
Plant Pest Act, 61 CSR 14), is authorized.

(d) The legislative rule filed in the State Register on the
twenty-sixth day of June, two thousand seven, authorized
under the authority of section three, article two-b, chapter
nineteen of this code, relating to the Commissioner of
Agriculture (inspection of meat and poultry, 61 CSR 16), is
authorized.

(e) The legislative rule filed in the State Register on the
twenty-fourth day of July, two thousand seven, authorized
36 under the authority of section ten, article eleven-b, chapter
37 nineteen of this code, relating to the Commissioner of
38 Agriculture (frozen desserts and imitation frozen desserts, 61
39 CSR 4B), is authorized.


(a) The legislative rule filed in the State Register on the
twenty-fifth day of July, two thousand seven, authorized
under the authority of section ten, article three, chapter
double of this code, modified by the State Auditor to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the eighteenth
day of October, two thousand seven, relating to the State
Auditor (standards for requisitions for payment issued to
state officers on the auditor, 155 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the
twenty-fifth day of July, two thousand seven, authorized
under the authority of section ten-a, article three, chapter
double of this code, modified by the State Auditor to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the eighteenth
day of October, two thousand seven, relating to the State
Auditor (State Purchasing Card Program, 155 CSR 7), is
authorized.

§64-9-4. Board of Dental Examiners.

The legislative rule filed in the State Register on the
nineteenth day of July, two thousand seven, authorized under
the authority of section six, article four, chapter thirty of this
code, modified by the Board of Dental Examiners to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the
seventeenth day of October, two thousand seven, relating to
the Board of Dental Examiners (rule for the West Virginia
Board of Dental Examiners, 5 CSR 1), is authorized.

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section eight, article eight, chapter three of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand seven, relating to the State Election Commission (corporate political activity, 146 CSR 1), is authorized with the following amendments:

On page one, subsection 2.2., by striking out the words "Contribution or Expenditure" and inserting in lieu thereof the words "Contribution' or 'Expenditure';

On page one, subdivision 2.2.e., by striking out "WV" and inserting in lieu thereof "W. Va."

On page three, subsection 3.1., line two, by striking out the word "series" and inserting in lieu thereof the word "rule";

On page four, subdivision 3.3.a., by striking out "WV" and inserting in lieu thereof "W. Va."

On page four, paragraph 3.3.c.1., by striking out "WV" and inserting in lieu thereof "W. Va."

On page four, paragraph 3.3.d.1., by striking out "WV" and inserting in lieu thereof "W. Va."

On page five, paragraph 3.3.f.5., lines four and seven, by striking out the word "Paragraph" and inserting in lieu thereof the word "paragraph".
On page five, paragraph 3.3.f.5., lines five and seven, by striking out the word “subsection” and inserting in lieu thereof the word “subdivision”;

On page five, paragraph 3.3.f.6., by striking out the words “the above regulations” and inserting in lieu thereof the words “this rule”;

On page five, paragraph 3.3.f.7., by changing the colon to a comma and by striking out the words “Provided, that such” and inserting in lieu thereof the words “provided that the”;

On page six, subsection 4.3., by striking out the words “The establishment, administration and solicitation of contributions to a Corporate Political Action Committee, by means and in amounts as herein specified:

4.3.a.”;

On page seven, subdivision 4.4.a., by striking out the word “Section” and inserting in lieu thereof the word “subsection”;

On page seven, subdivision 4.4.b., line five, by striking out the word “Section” and inserting in lieu thereof the word “subsection”;

On page eight, subsection 5.1., by striking out “WV” and inserting in lieu thereof “W. Va.”;

On page eight, subdivision 5.1.a., by striking out “5.1.a.” and by adding the subsequent sentence to the end of subsection 5.1.;

On page eight, subdivision 5.2.b., by striking out “WV” and inserting in lieu thereof “W. Va.”;
And,

On page nine, section seven, by striking out “7.1.”.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section five, article one-a, chapter three of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand seven, relating to the State Election Commission (regulation of campaign finance, 146 CSR 3), is authorized with the following amendment:

On page thirteen, by striking out section 14 in its entirety.

c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section five, article one-a, chapter three of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand seven, relating to the State Election Commission (election expenditures, 146 CSR 4), is authorized with the following amendment:

On page four, by striking out sections 12 and 13 in their entirety.


The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section six, article six, chapter thirty of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
on the seventh day of December, two thousand seven, relating to the Board of Funeral Service Examiners (funeral director, embalmer, apprentice, courtesy card holder and funeral establishment requirements, 6 CSR 1), is authorized with the following amendments:

On page two, section two, by striking subdivision 2.8.6 in its entirety;

On page fifteen, section sixteen, subdivision 16.11.3, by striking the words and numbers ‘two hundred dollars ($200)’ and inserting in lieu thereof the words and numbers ‘one hundred sixty dollars ($160.00)’;

And,

On page sixteen, section sixteen, by striking subdivisions 16.11.15 and 16.11.16 in their entirety.

§64-9-7. Board of Hearing Aid Dealers.

The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand seven, authorized under the authority of section three, article twenty-six, chapter thirty of this code, modified by the Board of Hearing Aid Dealers to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of January, two thousand eight, relating to the Board of Hearing Aid Dealers (rules governing the West Virginia Board of Hearing Aid Dealers, 8 CSR 1), is authorized with the following amendments:

On page two, subsection 4.1., by striking out ‘fifty dollars ($50.00)’ and inserting in lieu thereof ‘one hundred dollars ($100.00)’;

On page two, subsection 4.3., by striking out ‘forty dollars ($40.00)’ and the remaining sentence and inserting in lieu thereof ‘one hundred dollars ($100.00)’;
17 On page two, subsection 4.5., by striking out ‘one dollar
18 ($1.00)’ and inserting in lieu thereof ‘ten dollars ($10.00)’;

19 On page two, subsection 4.6., by striking out ‘twenty-five
dollars ($25.00)’ and inserting in lieu thereof ‘one hundred
dollars ($100.00)’;

22 On page three, subsection 4.7., by striking out ‘fifty
dollars ($50.00)’ and inserting in lieu thereof ‘one hundred
dollars ($100.00)’;

25 On page four, subsection 7.1., after the words ‘the
26 prospective customer:’ by striking out the remainder of the
27 subsection and inserting in lieu thereof the following: The
28 purchaser has been advised at the outset of his relationship
29 with the hearing aid dealer that any examination of
30 representation made by a licensed hearing aid dealer in
31 connection with the practice of fitting this hearing aid is not
32 an examination, diagnosis or prescription by a person
33 licensed to practice medicine in this state and therefore must
34 not be regarded as medical opinion.;

35 On page four, subdivision 7.5.d., by striking out the
36 words ‘be required to advise in writing’ and inserting in lieu
37 thereof the word ‘determine’;

38 On page four, by striking out all of subsection 7.6. and
39 renumbering the remaining subsections;

40 On page five, subsection 8.2., by striking out all of
41 subdivisions (i) and (j) and re-lettering the remaining
42 subdivision;

43 On page five, by striking out all of subsection 8.5;

44 On page six, subsection 9.4., by striking out the words
45 ‘terms ‘Certified Member’ or ‘Certified Hearing Aid
Audiologist” and inserting in lieu thereof the words ‘term ‘Certified Member’;

On page six, after subsection 9.6., by adding thereto a new subsection, to read as follows:

‘9.7. The hearing aid dealer must prominently display the following advisement: ‘Consumers may contact the West Virginia Board of Hearing Aid Dealers at 167 11th Avenue, South Charleston, WV 25303, if the consumer believes that the hearing aid dealer has not satisfied the terms of the contract.’;

On page seven, subsection 12.2., after the words ‘body of the purchase agreement:’ by striking out the remainder of the subsection and inserting in lieu thereof the following: ‘You have the right to return the hearing aid to the dealer from whom it was purchased at anytime within thirty (30) days after receipt of the aid and rescind the purchase agreement except for reasonable fitting and examination charges ($125.00 maximum fitting charge), if the aid does not function properly or cannot be adjusted to correct the deficiency in your hearing or is otherwise unsatisfactory. The aid so returned must be without damage.’;

And,

On page seven, by striking out all of subsection 12.4. and renumbering the remaining subsections.


The legislative rule filed in the State Register on the sixteenth day of July, two thousand seven, authorized under the authority of section six, article thirty-seven, chapter thirty of this code, relating to the Massage Therapy Licensure Board (general provisions, 194 CSR 1), is authorized.

(a) The legislative rule filed in the State Register on the eighteenth day of July, two thousand seven, authorized under the authority of section seven, article twenty-three, chapter thirty of this code, modified by the Medical Imaging and Radiation Therapy Technology Board of Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of October, two thousand seven, relating to the Medical Imaging and Radiation Therapy Technology Board of Examiners (rule of the Medical Imaging and Radiation Therapy Technology Board of Examiners, 18 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the eighteenth day of July, two thousand seven, authorized under the authority of section seven, article twenty-three, chapter thirty of this code, modified by the Medical Imaging and Radiation Therapy Technology Board of Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of October, two thousand seven, relating to the Medical Imaging and Radiation Therapy Technology Board of Examiners (continuing education, 18 CSR 2), is authorized with the following amendment:

On page one, subsection 1.2., by striking out ‘30-7A-5 &64-9-17(h)’ and inserting in lieu thereof ‘30-23-7’;

And,

On page five, subdivision 3.4.1., by striking out the words ‘Grand fathered’ and inserting in lieu thereof the word ‘grandfathered’.
(c) The legislative rule filed in the State Register on the eighteenth day of July, two thousand seven, authorized under the authority of section seven, article twenty-three, chapter thirty of this code, modified by the Medical Imaging and Radiation Therapy Technology Board of Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of October, two thousand seven, relating to the Medical Imaging and Radiation Therapy Technology Board of Examiners (standard of ethics, 18 CSR 5), is authorized.

§64-9-10. Board of Medicine.

(a) The legislative rule filed in the State Register on the tenth day of July, two thousand seven, authorized under the authority of section seven, article three, chapter thirty of this code, relating to the Board of Medicine (continuing education for physicians and podiatrists, 11 CSR 6), is authorized with the following amendments:

On page one, subsection 2.1., by striking out the number '1993' and inserting in lieu thereof the number '2008';

On page one, subsection 2.1., by striking out the words ‘At least thirty (30) hours of the hours must be related to the physician’s area or areas of specialty.’ and inserting in lieu thereof the following: ‘Beginning July 1, 2008, at least thirty (30) hours of the continuing medical education hours must be related to the physician’s area or areas of specialty.’;

And,

On page two, subsection 2.3., by striking out the words ‘At least thirty (30) hours of the hours must be related to the podiatrist’s area or areas of specialty.’ and inserting in lieu thereof the following: ‘Beginning July 1, 2008, at least thirty (30) hours of the continuing podiatric education hours must be related to the podiatrist’s area or areas of specialty.’.
(b) The legislative rule filed in the State Register on the sixteenth day of November, two thousand six, authorized under the authority of section twenty-eight, article five, 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 tenth day of October, two thousand seven, relating to the Board of Medicine (collaborative pharmacy practice, 11 CSR 8), is authorized.

(c) The legislative rule filed in the State Register on the nineteenth day of July, two thousand seven, authorized under the authority of section seven-a, 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-ninth day of November, two thousand seven, relating to the Board of Medicine (certification, disciplinary and complaint procedures, continuing education and radiologist assistants, 11 CSR 9), is authorized.


The legislative rule filed in the State Register on the thirteenth day of June, two thousand seven, authorized under the authority of section seven, article twenty-five, chapter thirty of this code, modified by the Nursing Home Administrators Licensing Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-eighth day of August, two thousand seven, relating to the Nursing Home Administrators Licensing Board (nursing home administrators, 21 CSR 1), is authorized with the following amendment:

On page six, subdivision 4.2.1.a., after the words ‘Emeritus State Administrators’ by striking out the remainder of the subdivision and inserting in lieu thereof the words ‘shall obtain annually at least ten (10) clock hours of
continuing education approved as provided in subsection 4.2.1. of this rule.’.


The legislative rule filed in the State Register on the ninth day of July, two thousand seven, authorized under the authority of section fifteen, article three-c, chapter five-a of this code, modified by the Pharmaceutical Cost Management Council to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of January, two thousand eight, relating to the Pharmaceutical Cost Management Council (prescription drug advertising expense reporting, 206 CSR 1), is authorized.


(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section six, article thirteen-a, chapter thirty of this code, modified by the Board of Professional Surveyors 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 seven, relating to the Board of Professional Surveyors (examination and licensing of professional surveyors in West Virginia, 23 CSR 1), is authorized with the following amendment:

On page one, subsection 1.2., by striking out ‘30-13A-5(13)’ and inserting in lieu thereof ‘30-13A-6’;

On page two, subsection 2.10., after the word ‘Board’, by inserting a period and striking out the remainder of that subsection.

On page four, subdivision 3.1.d., after the word ‘data’ by striking out the words ‘education and employment history’;
On page five, subdivision 3.4.a.3., after the words ‘of the examination’, by striking out the word ‘for’ and inserting in lieu thereof the word ‘after’;

On page eight, subdivision 5.2.c. after the word ‘certificate’ by striking out the word ‘shall’ and inserting in lieu thereof the word ‘may’;

On page nine, subdivision 5.2.f.3. after the word ‘examination’ by striking the word ‘for’ and inserting in lieu thereof the word ‘after’;

On page nine, subdivision 5.3.c. after the underlined word ‘shall’ by adding the word ‘conspicuously’;

On page ten, after subdivision 5.3.e. by adding a new subdivision, designated 5.3.f., to read as follows: ‘A wallet card shall be issued simultaneously to be kept on the licensee’s person.’;

And,

On page ten, subdivision 5.5.c, in the second sentence, after the word ‘months’ by striking the word ‘shall’ and inserting in lieu thereof the word ‘may’.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section five, article thirteen-a, chapter thirty of this code and section six of said article, modified by the Board of Professional Surveyors 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 seven, relating to the Board of Professional Surveyors (fees for surveyors and surveying firms, 23 CSR 4), is authorized with the following amendment:
On page one, subsection 1.2., after “30-13A-5(13)” by inserting “and §30-13A-6;”;

On page three, section 4, after the words “PS License (Active or Inactive)”, by striking out “$150.00” and inserting in lieu thereof “$100.00”;

On page three, section 4, by striking out the colon and the following:

“Less than ten (10) employees $150.00”
“Ten (10) employees to less than fifty (50) $250.00”
“Fifty (50) employees or more $500.00”

and inserting in lieu thereof “$100.00”; And,

On page four, subdivision 4.5.i. after the words ‘Returned Check Fee’ by striking the figure ‘$40.00’ and inserting in lieu thereof the following ‘Maximum allowable by WV Code’.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section six, article thirteen-a, chapter thirty of this code, modified by the Board of Professional Surveyors 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 seven, relating to the Board of Professional Surveyors (standards for practice of surveying in West Virginia, 23 CSR 5), is authorized with the following amendment:

On page one, subsection 1.2., by striking out ‘5’ and inserting in lieu thereof ‘6’.

1. The legislative rule filed in the State Register on the
twenty-sixth day of September, two thousand six, authorized
under the authority of section six-b, article six, chapter
twenty-four of this code, relating to the Public Service
Commission (emergency telephone service, 150 CSR 25), is
authorized with the following amendments:

7. On page one, subsection 2.1., line one, by striking out
'these rules' and inserting in lieu thereof 'this rule';

9. On page one, subsection 2.1., line six, by striking out
'these rules' and inserting in lieu thereof 'this rule';

11. On page four, subsection 2.27., following the words 'the
Speaker of the House of Delegates or that person's designee'
by adding a comma and the words 'as a non-voting member';

14. On page four, subsection 2.27., following the words 'the
Senate President or that person’s designee' by adding a
comma and the words 'as a non-voting member';

17. On page eight, subsection 5.1., by striking out '5.1.a.'
and inserting in lieu thereof '5.2.' and by renumbering the
remaining subsections accordingly;

20. On page ten, section seven, by striking out '7.1.';

21. On page twelve, section twelve, by striking out '12.1.';

22. On page sixteen, subdivision 13.5.d, at the end of the
second line, following the word 'least', by striking the word
'five' and inserting in lieu thereof the words 'four voting';

25. And,
On page sixteen, by striking subsection 13.6. in its entirety.

§64-9-15. Secretary of State.

The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section three, article three, chapter thirty-nine-a of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the ninth day of October, two thousand seven, relating to the Secretary of State (use of digital signatures, state certificate authority and state repository, 153 CSR 30), is authorized with the following amendments:

On page two, subsection 3.3., by striking out the words ‘and approved by’;

On page two, subsection 3.3., after the word ‘Technology’, by changing the comma to a period, striking out the words ‘through its chief technology officer or his or her designee,’ and inserting in lieu thereof the words ‘The specifications must be approved by the Office of Technology’;

On page four, subsection 6.2., after the word ‘Technology’, by striking out the comma and the words ‘through its chief technology officer or his or her designee’;

On page four, subdivision 7.1.h., after the word ‘The’ by inserting the words ‘Secretary of State may ask or enter into an agreement with the’;

On page four, subdivision 7.1.h., after the word ‘Technology’, by striking out the comma and the words ‘through its chief technology officer or his or her designee, shall’ and inserting in lieu thereof the word ‘to’;
29 On page four, subdivision 7.1.h., after the word ‘and’ by inserting the word ‘to’;

31 On page five, subsection 7.3., by striking out the words ‘Office of Technology, through its chief technology officer or his or her designee,’ and by inserting the words ‘Secretary of State’;

35 On page five subsection 7.3., by striking out the words ‘for a term no less that one year’;

37 On page five subsection 7.3., after the period, by inserting the words ‘The Secretary of State may defer to the Office of Technology his or her authority to initiate the procurement process.’;

41 On page five, subsection 7.4., after the word ‘The’, by inserting the words ‘Secretary of State may ask or enter into an agreement with the’;

44 On page five, subsection 7.4., by striking out the word ‘shall’ and inserting in lieu thereof the word ‘to’;

46 On page five, subsection 7.4., by striking out the words ‘Secretary of State’ and inserting in lieu thereof the words ‘him or her’;

49 And,

50 On page five, subdivision 7.5.a., by striking out the words ‘The Office of Technology, through its chief technology officer or his or her designee, shall inform the Secretary of State’ and insert in lieu thereof the words ‘The Secretary of State may ask or enter into an agreement with the Office of Technology to inform him or her’.

(a) The legislative rule filed in the State Register on the twenty-seventh day of June, two thousand seven, authorized under the authority of section ten, article thirty-two, chapter thirty of this code, modified by the Board of Examiners for Speech-Language Pathology and Audiology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand seven, relating to the Board of Examiners for Speech-Language Pathology and Audiology (licensure of speech-pathology and audiology, 29 CSR 1), is authorized with the following amendments:

   On page two, section 6.1.b., by striking the word ‘five’ and reinserting in lieu thereof the word, ‘ten’;

   And,

   On page twenty, section 13.11., after the word ‘licensure’ and the period, by striking out the remainder of the rule.

(b) The legislative rule relating to the Board of Examiners for Speech-Language Pathology and Audiology (Code of Ethics, 29 CSR 5), is authorized as follows:

   ‘

West Virginia Board of Examiners for Speech-Language Pathology and Audiology Code of Ethics

§29-5-1. General.

1 1.1. Scope. – This legislative rule establishes standards of conduct speech-language pathologist or audiologist in the State of West Virginia.

4 1.2. Authority. – W.Va. Code §30-32-10

5 1.3. Filing Date. –
1.4. Effective Date. --

1.5. Preamble: The preservation of the highest standards of integrity and ethical principles is vital to the responsible discharge of obligations in the professions of Speech-Language Pathology and Audiology. This code of Ethics sets forth the fundamental principles and rules considered essential to this purpose. Every individual who is licensed by this Board as a Professional, Provisional or a Speech or Audiology Assistant.

§29.5.2. Licensed by this Board as a Professional, Provisional or a Speech or Audiology Assistant.

2.1. Any action that violates the spirit and purpose of this Code shall be considered unethical. Failure to specify any particular responsibility or practice in this Code of Ethics shall not be construed as denial of the existence of such responsibilities or practices.

2.2. The fundamentals of ethical conduct are described by Principles of Ethics and Rules of Ethics as they relate to responsibility to persons served, to the public, and to the professions of speech-language pathology and audiology.

2.3. Principles of Ethics, aspirational and inspirational in nature, form the underlying moral basis for the Code of Ethics. Licensees shall observe these principles as affirmative obligations under all conditions of professional activity. Rules of Ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all licensees.

2.4. Principle of Ethics I

2.4.a. Licensees shall honor their responsibility to hold paramount the welfare of persons they serve professionally.
2.4.b. Rules of Ethics

2.4.b.1. Licensees shall provide all services competently.

2.4.b.2. Licensees shall use every resource, including referral when appropriate, to ensure that high-quality service is provided.

2.4.b.3. Licensees shall not discriminate in the delivery of professional services on the basis of race, ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

2.4.b.4. Licensees shall fully inform the persons they serve of the nature and possible effects of services rendered and products dispensed.

2.4.b.5. Licensees shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can be reasonably expected.

2.4.b.6. Licensees shall not guarantee the results of any treatment or procedure, directly or by implication; however, they may make a reasonable statement of prognosis.

2.4.b.7. Licensees shall not evaluate or treat speech, language, or hearing disorders solely by correspondence.

2.4.b.8. Licensees shall maintain adequate records of professional services rendered and products dispensed and shall allow access to these records when appropriately authorized.

2.4.b.9. Licensees shall not reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or the community.
2.4.b.10. Licensees shall not charge for services not rendered, nor shall they misrepresent, in any fashion, services rendered or products dispensed.

2.4.b.11. Licensees shall use persons in research or as subjects of teaching demonstrations only with their informed consent.

2.4.b.12. Licensees whose professional services are adversely affected by substance abuse or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected areas of practice.

2.5. Principles of Ethics II

2.5.a. Licensees shall honor their responsibility to achieve and maintain the highest level of professional competence.

2.5.b. Rules of Ethics

2.5.b.1. Licensees shall engage in the provision of clinical services only when they hold the appropriate license or when they are in the licensure process and are supervised by an individual who holds the appropriate license.

2.5.b.2. Licensees shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

2.5.b.3. Licensees shall continue their professional development throughout their careers.

2.5.b.4. Licensees shall delegate the provision of clinical services only to persons who are licensed or to persons in the education or licensure process who are appropriately supervised. The provision of support services may be
77 delegated to persons who are neither licensed nor in the
78 licensure process only when a license holder provides
79 appropriate supervision.

80 2.5.b.5. Licensees shall prohibit any of their professional
81 staff from providing services that exceed the staff member’s
82 competence, considering the staff member’s level of
83 education, training, and experience.

84 2.5.b.6. Licensees shall ensure that all equipment used in
85 the provision of services is in proper working order and is
86 properly calibrated.

87 2.6. Principle of Ethics III

88 2.6.a. Licensees shall honor their responsibility to the
89 public by promoting public understanding of the professions,
90 by supporting the development of services designed to fulfill
91 the unmet needs of the public, and by providing accurate
92 information in all communications involving any aspect of
93 the professions.

94 2.6.b. Rules of Ethics

95 2.6.b.1. Licensees shall not misrepresent their
96 credentials, competence, education, training, or experience.

97 2.6.b.2. Licensees shall not participate in professional
98 activities that constitute a conflict of interest.

99 2.6.b.3. Licensees shall not misrepresent diagnostic
100 information, services rendered, or products dispensed or
101 engage in any scheme or artifice to defraud in connection
102 with obtaining payment or reimbursement for such services
103 or products.
2.6.b.4. Licensees’ statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, and about professional services.

2.6.b.5. Licensees’ statements to the public -- advertising, announcing, and marketing their professional services, reporting research results, and promoting products -- shall adhere to prevailing professional standards and shall not contain misrepresentations.

2.7. Principle of Ethics IV

2.7.a. Licensees shall honor their responsibilities to the professions and their relationships with colleagues, students, and members of allied professions. Licensees shall uphold the dignity and autonomy of the professions, maintain harmonious interprofessional and intraprofessional relationships, and accept the professions’ self-imposed standards.

2.7.b. Rules of Ethics

2.7.b.1. Licensees shall prohibit anyone under their supervision from engaging in any practice that violates the Code of Ethics.

2.7.b.2. Licensees shall not engage in dishonesty, fraud, deceit, misrepresentation, or any form of conduct that adversely reflects on the professions or on the licensee’s fitness to serve persons professionally.

2.7.b.3. Licensees shall assign credit to only those licensees who have contributed to a publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor’s consent.
2.7.6.4. Licensee’s statements to colleagues about professional services, research results, and products shall adhere to prevailing professional standards and shall contain no misrepresentations.

2.7.b.5. Licensees shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

2.7.b.6. Licensees shall not discriminate in their relationships with colleagues, students, and members of allied professions on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

2.7.b.7. Licensees who have reason to believe that the Code of Ethics has been violated shall inform the West Virginia Board of Examiners.

2.7.b.8. Licensees shall cooperate fully with the West Virginia Board of Examiners in its investigation and adjudication of matters related to this Code of Ethics.’.

§64-9-17. Board of Veterinary Medicine.

The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 fourth day of January, two thousand eight, relating to the Board of Veterinary Medicine (the registration of veterinary technicians, 26 CSR 3), is authorized.
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; relating to authorizing the Division of Labor to promulgate a legislative rule relating to steam boiler inspection; authorizing the Division of Labor to promulgate a legislative rule relating to verifying the legal employment status of workers; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of plumbing work; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to the criteria and standards for alternative training
programs for apprentice coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the revocation of hunting and fishing licenses; 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 conditions upon which oil and gas operators may access state forests; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to wildlife scientific collection permits.

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

**§64-10-1. Division of Labor.**

1 (a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section seven, article three, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand seven, relating to the Division of Labor (steam boiler inspection, 42 CSR 3), is authorized.
(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section three, article one-b, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand seven, relating to the Division of Labor (verifying the legal employment status of workers, 42 CSR 31), is authorized with the following amendment:

On page one, subsection 3.8., after the word “employer”, by striking out the words “as defined in this rule”;

On page two, section 4, by striking out the subsection designation “4.1.”;

On page two, section 4 by striking out subsection 4.2 in its entirety;

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

On page three, subsection 6.5., by striking out subdivision 6.5.a. in its entirety and by striking out the subdivision designation “b.”;

On page three, subsection 6.6. by striking out the subdivision designation “a.” and by striking out subdivision 6.6.b. in its entirety;

On pages three and four, by striking out subsection 7.1. in its entirety and inserting in lieu thereof the following:

“7.1. The Commissioner may ask the Bureau of Employment programs, the Division of Motor Vehicles or any other state agency for assistance in confirming the
validity of an employee's legal status or authorization to work.”;

And,

On page four, by striking out section 8 in its entirety.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section four, article fourteen, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand seven, relating to the Division of Labor (supervision of plumbing work, 42 CSR 32), is authorized with the following amendment:

On page two, subsection 7.2, at the beginning of the first sentence in the subsection, by inserting the words “Subject to the provisions of subsection 6.2 of this rule,”;

On page three, subsection 8.1, at the end of the subsection, by inserting the words: “The Commissioner may, on his or her own motion, conduct an investigation to determine whether there are any grounds for disciplinary action against a licensee. The Commissioner shall, upon the written complaint of any person, conduct an investigation to determine whether there are any grounds for disciplinary action against a licensee. The Commissioner may provide a form for this purpose, but a complaint may be filed in any form. The Commissioner shall provide a copy of the complaint to the licensee.”;

On page four, section 9, by striking out the subsection in its entirety and inserting in lieu thereof a new section 9, to read as follows:
“§42-32-9. Cease and desist orders; penalties; appeals.

1 9.1 The Commissioner may issue a cease and desist order to any person performing or offering to perform plumbing work without a license issued by the Commissioner. Any person continuing to engage in plumbing work after the issuance of a cease and desist order is subject to the penalties set forth in W. Va. Code §21-14-7.

7 9.2 Any person adversely affected by an action of the Commissioner may appeal the action pursuant to the provisions of W. Va. Code §29A-5.”; and

10 On page four, by renumbering section 12 as section 11.


1 The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section five, article seven, chapter twenty-two-a, of this code, modified by the Office of Miners’ Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of December, two thousand seven, relating to the Office of Miners’ Health, Safety and Training (criteria and standards for alternative training programs for apprentice coal mine electricians, 48 CSR 8), is authorized.

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

1 (a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section twenty-three-a, article two, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
Register on the fifth day of November, two thousand seven, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized with the following amendments:

On page six, subsection 5.2, by striking out the subsection in its entirety and inserting lieu there of the following language:

“5.2 Fee Amount.

5.2.1. The study and improvement fee is thirty-five cents ($0.35) for each customer transported on a commercial whitewater trip in study zones on the Cheat, New, Shenandoah and Tygart Valley Rivers.

5.2.2. The study and improvement fee is seventy cents ($0.70) for each customer transported on a commercial whitewater trip in study zones on the Gauley River.

5.2.3. If a commercial whitewater trip exceeds one day in duration, the appropriate fee shall be collected for each day, or part of a day, of the trip.”

On page six, by striking out subsection 5.4, including subdivisions 5.41 and 5.4.2, in their entirety, and inserting in lieu thereof the following language:

“5.4. Gauley River Study and Improvement Fee:

5.4.1. For the purpose of improving and promoting the whitewater industry on the Gauley River, one-half of all study and improvement fees collected pursuant to subdivision 5.2.2 of this rule shall be used to stock the Gauley River with trout during the spring and fall seasons of each year to mitigate the loss of fishing opportunities resulting from the additional water volume on the Gauley River. The
Whitewater Commission may hire a private contractor to administer the trout stocking program.

5.4.2. The Whitewater Commission shall review the amount of the study and improvement fee collected pursuant to subdivision 5.2.2 of this rule every four years to determine whether the fee is sufficient to assure adequate funding for the trout stocking program.”

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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 fifth day of November, two thousand seven, relating to the Division of Natural Resources (revocation of hunting and fishing licenses, 58 CSR 23), is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, 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.

(d) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifteenth day of January, two thousand eight, relating to the Division of Natural Resources (conditions upon which oil and gas operators may access state forests, 58 CSR 35), is authorized.
(e) The legislative rule filed in the State Register on the nineteenth day of July, two thousand seven, 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 fifth day of November, two thousand seven, relating to the Division of Natural Resources (wildlife scientific collection permits, 58 CSR 42), is authorized.

CHAPTER 142

(Com. Sub. for H.B. 4076 - By Delegate Cowles)

[Passed February 29, 2008; in effect from passage.]
[Approved by the Governor on March 10, 2008.]

AN ACT to amend and reenact §4-2A-2, §4-2A-4, §4-2A-6 and §4-2A-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5-5-2 of said code, all relating to providing employment benefits to public officials generally; increasing basic compensation and per diem expense allowance for members of the Legislature; increasing certain additional compensations for certain members of the Legislature; and increasing the annual incremental salary increase for certain eligible employees of the state.

Be it enacted by the Legislature of West Virginia:

That §4-2A-2, §4-2A-4, §4-2A-6 and §4-2A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §5-5-2 of said code be amended and reenacted, all to read as follows:
Chapter
4. The Legislature.
5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.
§4-2A-4. Additional compensation for President of Senate, Speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.
§4-2A-6. Travel expenses.
§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

§4-2A-2. Basic compensation for services; proration.

1 (a) Beginning in the calendar year two thousand nine and for each calendar year after that, each member of the Legislature shall receive as basic compensation for his or her services the sum of twenty thousand dollars per calendar year, to be paid as provided in subsection (b) of this section.
2 In addition to the basic compensation, members shall receive the additional compensations as are expressly provided in sections three, four and five of this article. All other increased amounts or new amounts in respect to the compensation of members of the Legislature, set forth in the resolution of the Citizens Legislative Compensation Commission, dated the ninth day of January, two thousand seven, and implemented in sections two, four, six and eight of this article providing for new amounts or amounts increased to new amounts greater than those in force and effect on the first day of January, two thousand seven, become effective for calendar year two thousand nine and each calendar year after that: Provided, That increased amounts or new amounts in respect to the expenses of members of the Legislature, set forth in
said resolution, and implemented in sections six and eight of this article providing for new amounts or amounts increased to new amounts greater than those in force and effect on the first day of January, two thousand seven, become effective for calendar year two thousand eight and each calendar year after that.

(b) The basic compensation is payable as follows:

(1) In the year two thousand nine, and every fourth year after that:

(A) Five thousand dollars in each of February, March and April, payable twice a month; and

(B) Six hundred twenty-five dollars in each of January, May, June, July, August, September, October and November, payable once a month.

(2) Beginning in two thousand ten, in all years except those described in subdivision (1) of this subsection:

(A) Five thousand dollars in each of January, February and March, payable twice a month; and

(B) Six hundred twenty-five dollars in each of April, May, June, July, August, September, October and November, payable once a month;

(c) In the event of the death, resignation or removal of a member of the Legislature and the appointment and qualification of his or her successor, the compensation provided in this section for the month in which the death, resignation or removal of the member of the Legislature occurs shall be prorated between the original member and his or her successor on the basis of the number of days served, including Saturdays and Sundays in the month.
§4-2A-4. Additional compensation for President of Senate, Speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.

(a) In addition to the basic and additional compensation provided in sections two and three of this article, the President of the Senate and the Speaker of the House of Delegates shall each receive additional compensation of:

(1) One hundred fifty dollars per day for each day actually served during any regular, extension of regular or extraordinary session as presiding officer, including Saturdays and Sundays; and

(2) One hundred fifty dollars per day for attending to legislative business when the Legislature is not in regular, extension of regular or extraordinary session and interim committees are not meeting.

(b) In addition to the basic and additional compensation provided in sections two and three of this article, the majority leaders and minority leaders of the Senate and of the House of Delegates shall each receive additional compensation of fifty dollars per day for each day actually served during any regular, extension of regular or during extraordinary session, including Saturdays and Sundays, as the selected legislative leaders of their respective political parties.

(c) The presiding officer and majority and minority leader compensation shall be paid, from time to time, during any such session or interim period, as the case may be, as may be prescribed by rules established by the Legislative Auditor.

(d) In addition to the basic and additional compensation provided in sections two and three of this article, the chairpersons of the committees on finance and committees on
the judiciary of the respective houses and up to six additional persons from each house, to be named by the presiding officer, shall each receive an additional compensation of one hundred fifty dollars per day up to a maximum of thirty days for attending to legislative business when the Legislature is not in regular, extended or extraordinary session and interim committees are not meeting.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

(a) Each member of the Legislature is entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to travel in the performance of his or her duties as a member of the Legislature or any committee of the Legislature, whether the committee is operating under general law or resolution, including, but not limited to, attendance at party caucuses held in advance of the date of the assembly of the Legislature in regular session in odd-numbered years for the purpose of selecting candidates for officers of the two houses, at a rate equal to that paid by the travel management office of the Department of Administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of those means of transportation actually used, plus the cost of necessary taxi or limousine service, tolls and parking fees in connection with the travel, but during any regular, extension of regular or extraordinary session, travel expenses shall not be paid to any member for more than one round trip to and from the seat of government and to and from his or her place of residence for each week of the session.

(b) In addition to the travel expense in subsection (a) of this section, the President of the Senate and the Speaker of
the House of Delegates are entitled to be reimbursed as
provided in subsection (a) of this section, upon submission of
an expense voucher, for expenses incurred incident to travel
which is related to their duties as presiding officers of the
respective houses of the Legislature, but which takes place
when the Legislature is not in regular, extension of regular or
extraordinary session and interim committees are not
meeting.

(c) The rate paid for mileage pursuant to this section may
change from time to time in accordance with changes in the
reimbursement rates established by the travel management
office of the Department of Administration, or its successor
agency.

§4-2A-7. Reimbursement for expenses incurred during any
session or interim assignment.

(a) Each member of the Legislature who does not
commute daily shall receive the sum of one hundred thirty-
one dollars per day as per diem allowance in connection with
any regular, extended, extraordinary session, interim
assignment or for any member authorized by the presiding
officer. Any member of the Legislature who does commute
daily shall receive the sum of fifty-five dollars per day as the
per diem allowance and, in addition to the allowance, shall be
reimbursed for overnight commuting expenses at the mileage
rate equal to the amount paid by the travel management
office of the Department of Administration for the most
direct usually traveled route, if travel is by private
automobile, or for actual transportation costs for direct route
travel, if travel is by public carrier, or for any combination of
the means of transportation actually used, plus the costs of
necessary taxi or limousine service, tolls and parking fees in
connection with the travel: Provided, That the total of this
per diem allowance plus travel expense for a daily
commuting member may not exceed one hundred thirty-one
20 dollars per day. The amount for mileage paid pursuant to this
21 subsection may change from time to time in accordance with
22 changes in the level of reimbursement by the travel
23 management office.

24 (b) The President of the Senate and the Speaker of the
25 House of Delegates, the chairman of the house committee on
26 finance, the chairman of the senate committee on finance, the
27 chairman of the house committee on the judiciary, the
28 chairman of the senate committee on the judiciary, and up to
29 six additional persons from each house designated by the
30 presiding officer pursuant to section four of this article, shall
31 be reimbursed for travel at the rate established in subsection
32 (a) of this section, and shall further receive the per diem
33 allowance established in the subsection in connection with
34 business which is related to their duties as officers at the
35 times when the Legislature is not in regular, extended or
36 extraordinary session, and interim committees are not
37 meeting.

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.

§5-5-2. Granting incremental salary increases based on years of
service.

1 (a)(1) Every eligible employee with three or more years
2 of service shall receive an annual salary increase equal to
3 fifty dollars times the employee’s years of service. In each
4 fiscal year and on the first day of July, each eligible
employee shall receive an annual increment increase of fifty
dollars for that fiscal year.

(2) For fiscal years beginning the first day of July, two
thousand eight, and each fiscal year thereafter, every eligible
employee with one or more years of service shall receive an
annual salary increase equal to sixty dollars times the
employee’s years of service. In each fiscal year and on the
first day of July, each eligible employee shall receive an
annual increment increase of sixty dollars for that fiscal year.

(b)(1) Except as provided in subdivision (2) of this
subsection, every employee becoming newly eligible as a
result of meeting the three years of service minimum
requirement on the first day of July in any fiscal year is
entitled to the annual salary increase equal to fifty dollars
times the employee’s years of service, where he or she has
not in a previous fiscal year received the benefit of an
increment computation. Thereafter, the employee shall
receive a single annual increment increase of fifty dollars for
each subsequent fiscal year.

(2) Every employee becoming newly eligible as a result
of meeting the three years of service minimum requirement
on the first day of July in any fiscal year subsequent to the
fiscal year ending the thirtieth day of June, two thousand
eight, is entitled to the annual salary increase equal to sixty
dollars times the employee’s years of service, where he or
she has not in a previous fiscal year received the benefit of an
increment computation. Thereafter, the employee shall
receive a single annual increment increase of sixty dollars for
each subsequent fiscal year.

(c) These incremental increases are in addition to any
across-the-board, cost-of-living or percentage salary
increases which may be granted in any fiscal year by the
Legislature.
(d) This section shall not be construed to prohibit other pay increases based on merit, seniority, promotion or other reason, if funds are available for the other pay increases: Provided, That the executive head of each spending unit shall first grant the mandated increase in compensation in this section to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion or other reason.

CHAPTER 143


[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §38-5A-4 and §38-5A-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §38-5B-4 of said code; and to amend and reenact §59-1-11 of said code, all relating to service of suggestee execution and notice; and clarifying certain fees assessed by circuit clerks.

Be it enacted by the Legislature of West Virginia:

That §38-5A-4 and §38-5A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §38-5B-4 of said code 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.
CHAPTER 38. LIENS.

Article
5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.
5B. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

§38-5A-4. A certified copy of an execution issued under this article against salary or wages shall be served upon the judgment debtor. Such service shall be made by the court or the clerk of the court who issued the execution by mailing the copy to the judgment debtor or his or her agent authorized to accept service of process by certified mail, return receipt requested. The day and hour of such mailing shall be clearly noted on the face of the original execution and the clerk of the court or the officer to whom it is delivered for collection shall not make service upon the suggestee until the expiration of five days from that time.

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

§38-5A-5. (a) Service of a suggestee execution against salary or wages may be made by the clerk of the circuit court or the magistrate court clerk, as the case may be, by sending a copy
of the suggestee execution to the suggestee by certified mail, return receipt requested, with delivery restricted to the addressee as provided by subdivision (1), section (d) of rule four of the Rules of Civil Procedure for trial courts of record. If the registered mail is unclaimed or otherwise is not accepted or is refused by the suggestee, then service of the suggestee execution shall be made in the same manner as a summons commencing an action is served in accordance with the Rules of Civil Procedure for trial courts of record: Provided, That if the suggestee is located in a county other than the county where the suggestee execution issues, the clerk may mail the suggestee execution by first class mail to the sheriff of the other county for such service. If the service is made on a corporation, limited liability company or other person or entity through the Secretary of State, it shall be submitted along with the fee required by section two, article one, chapter fifty-nine of this code.

(b) If the suggestee served with the execution is indebted or will in the future become indebted to the judgment debtor for salary or wages, then during the time the execution remains a lien on any indebtedness for salary and wages the suggestee is required to pay over to the officer serving the same or to the judgment creditor the percentage of the indebtedness required by section three of this article until the execution is wholly satisfied. The suggestee shall deduct the amounts paid from the amounts payable to the judgment debtor as salary or wages and the deduction of these amounts is a bar to any further action by the judgment creditor against the wages or salary of the judgment debtor.

(c) Once every ninety days during the life of such execution and any renewal execution the suggestee upon whom the execution or any renewal execution is served shall pay over to the officer who served the same or to the judgment creditor the full amount of money held or retained pursuant to such execution or renewal execution during the preceding ninety days.
If the suggestee upon whom the execution is served fails or refuses to pay over to the officer serving the execution or to the judgment creditor the required percentage of the indebtedness, as aforesaid, he or she shall be liable to an action therefor by the judgment creditor named in the execution and the amount recovered in the action shall be applied in satisfaction of the execution.

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. 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 issuing a suggestion and serving notice to the debtor by certified mail, twenty-five dollars;

(4) For issuing an execution, twenty-five dollars;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, 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 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

(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 written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

CHAPTER 144

(Com. Sub. for S.B. 234 - By Senators Prezioso, Foster, Hunter, Sharpe, Stollings, Boley, Caruth, Jenkins and Kessler)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §48-25A-1, §48-25A-2 and §48-25A-3, all relating to the creation of a Maternal Mortality Review Team; establishing its members and
responsibilities; and giving the Bureau of Public Health rule-making authority for the team.

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 §48-25A-1, §48-25A-2 and §48-25A-3, all to read as follows:

§48-25A-1. Legislative findings.

ARTICLE 25A. MATERNAL MORTALITY REVIEW TEAM.

§48-25A-1. Legislative findings.

1 The Legislature finds that there is a need for a process to study the causes of maternal deaths. It has been found that comprehensive studies indicate that maternal mortalities are more extensive than first appear on death certificates. The Legislature finds that more extensive studies would enable a more fully developed plan to avoid these deaths in the future.


1 (a) The Maternal Mortality Review Team is hereby established under the office of Maternal Child and Family Health. The Maternal Mortality Review Team is a multidisciplinary team created to review the deaths of women who die during pregnancy, at the time of birth or within one year of the birth of a child.

7 (b) The Maternal Mortality Review Team is to consist of the following members, appointed by the Governor:

9 (1) The Director of the office of Maternal Child and Family Health, who is to serve as the chairperson of the
11 Maternal Mortality Review Team and is responsible for calling and coordinating all meetings;

13 (2) The Commissioner of the Bureau for Public Health or a designee;

15 (3) The Chief Medical Examiner in the Bureau of Public Health or a designee;

17 (4) The Director of the Division of Vital Statistics or a designee;

19 (5) Representation from each of the three medical schools in the state;

21 (6) The Director of Obstetrics, the Director of the Neonatal Intensive Care Unit and the Director of Pediatrics at each of the tertiary care hospitals in the state;

24 (7) One representative of the West Virginia State Medical Association;

26 (8) One representative of the West Virginia Nurses Association;

28 (9) One representative of the West Virginia Society of Osteopathic Medicine;

30 (10) One representative of West Virginia Academy of Family Physicians;

32 (11) One representative of the West Virginia Chapter of the American College of Nurse Midwives;

34 (12) One representative of the West Virginia Chapter of the American College of Obstetrics and Gynecology;
(13) One representative of the West Virginia Chapter of
the American Academy of Pediatrics;

(14) The Director of the Child Fatality Review Team; and

(15) Any additional person that the chair of the team
determines is needed on a particular case being considered.

(c) Each member shall serve for a term of five years. Of
the members of the commission first appointed, one shall be
appointed for a term ending the thirtieth day of June, two
thousand nine, and one each for terms ending one, two, three
and four years thereafter.

(d) Members of the Maternal Mortality Review Team
shall, unless sooner removed, continue to serve until their
respective terms expire and until their successors have been
appointed and have qualified.

(e) An appointment of a physician, whether for a full
term or to fill a vacancy, is to be made by the Governor from
among three nominees selected by the West Virginia State
Medical Association or the organization to be represented on
the team. When an appointment is for a full term, the
nomination is to be submitted to the Governor not later than
eight months prior to the date on which the appointment is to
become effective. In the case of an appointment to fill a
vacancy, the nominations are to be submitted to the Governor
within thirty days after the request for the nomination has
been made by the Governor to the chairperson or president of
the organization. When an association fails to submit to the
Governor nominations for the appointment in accordance
with the requirements of this section, the Governor may make
the appointment without nominations.

(f) Each member of the Maternal Mortality Review Team
shall serve without additional compensation and may not be
reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.


(a) The Bureau of Public Health in consultation with the Maternal Mortality Review Team shall, pursuant to the provisions of article three, chapter twenty-nine-a, promulgate rules applicable to the following:

(1) The standard procedures for the establishment, formation and conduct of the Maternal Mortality Review Team; and

(2) The protocols for the review of maternal mortalities.

(b) The Maternal Mortality Review Team shall:

(1) Review all deaths of women who die during pregnancy, at the time of birth or within one year of the birth of a child;

(2) Establish the trends, patterns and risk factors;

(3) Provide statistical analysis regarding the causes of maternal fatalities in West Virginia; and

(4) Promote public awareness of the incidence and causes of maternal fatalities, including recommendations for their reduction.

(c) The Maternal Mortality Review Team shall submit an annual report to the Governor and to the Legislature concerning its activities and the incidents of maternal fatalities within the state. The report is due annually on the first day of December. The report is to include statistics
setting forth the number of maternal fatalities, identifiable
trends in maternal fatalities in the state, including possible
causes, if any, and recommendations to reduce the number of
preventable maternal fatalities in the state. The report is to
also include the number of mothers whose deaths have been
determined to have been unexpected or unexplained.

(d) The Maternal Mortality Review Team, in the exercise
of its duties as defined in this section, may not:

(1) Call witnesses or take testimony from individuals
involved in the investigation of a maternal fatality;

(2) Contact a family member of the deceased mother,
except if a member of the team is involved in the
investigation of the death and must contact a family member
in the course of performing his or her duties outside of the
team; or

(3) Enforce any public health standard or criminal law or
otherwise participate in any legal proceeding, except if a
member of the team is involved in the investigation of the
death or resulting prosecution and must participate in a legal
proceeding in the course of performing in his or her duties
outside of the team.

(e) Proceedings, records and opinions of the Maternal
Mortality Review Team are confidential, in accordance with
section one, article seven, chapter forty-nine of this code, and
are not subject to discovery, subpoena or introduction into
evidence in any civil or criminal proceeding. Nothing in this
subsection is to be construed to limit or restrict the right to
discover or use in any civil or criminal proceeding anything
that is available from another source and entirely independent
of the proceedings of the Maternal Mortality Review Team.

(f) Members of the Maternal Mortality Review Team
may not be questioned in any civil or criminal proceeding
Be it enacted by the Legislature of West Virginia:

That §27-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe...
that the individual to be examined is addicted, as defined in
section eleven, article one of this chapter, or is mentally ill
and, because of his or her addiction or mental illness, the
individual is likely to cause serious harm to himself, herself
or to others if allowed to remain at liberty while awaiting an
examination and certification by a physician or psychologist.

Notwithstanding any language in this subsection to the
contrary, if the individual to be examined under the
provisions of this section is incarcerated in a jail, prison or
other correctional facility, then only the chief administrative
officer of the facility holding the individual may file the
application and the application must include the additional
statement that the correctional facility itself cannot
reasonably provide treatment and other services for the
individual's mental illness or addiction.

(b) The person making the application shall make the
application under oath.

(c) Application for involuntary custody for examination
may be made to the circuit court or a mental hygiene
commissioner of the county in which the individual resides
or of the county in which he or she may be found. When no
circuit court judge or mental hygiene commissioner is
available for immediate presentation of the application, the
application may be made to a magistrate designated by the
chief judge of the judicial circuit to accept applications and
hold probable cause hearings. A designated magistrate
before whom an application or matter is pending may, upon
the availability of a mental hygiene commissioner or circuit
court judge for immediate presentation of an application or
pending matter, transfer the pending matter or application to
the mental hygiene commissioner or circuit court judge for
further proceedings unless otherwise ordered by the chief
judge of the judicial circuit.
(d) The person making the application shall give information and state facts in the application as may be required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner or designated magistrate may enter an order for the individual named in the application to be detained and taken into custody for the purpose of holding a probable cause hearing as provided in subsection (g) of this section for the purpose of an examination of the individual by a physician, psychologist, a licensed independent clinical social worker practicing in compliance with article thirty, chapter thirty of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with article seven of said chapter, a physician assistant practicing in compliance with article three of said chapter or a physician assistant practicing in compliance with article fourteen-a of said chapter: Provided, That a licensed independent clinical social worker, a physician assistant or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed independent clinical social worker, physician assistant or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or addiction sufficient to make the determinations as are required by the provisions of this section. The examination is to be provided or arranged by a community mental health center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the hearing be held forthwith and is to provide for the appointment of counsel for the individual: Provided, however, That the order may allow the hearing to be held up to twenty-four hours after the person to be examined is taken into custody rather than forthwith if the
circuit court of the county in which the person is found has
previously entered a standing order which establishes within
that jurisdiction a program for placement of persons awaiting
a hearing which assures the safety and humane treatment of
persons: Provided further, That the time requirements set
forth in this subsection only apply to persons who are not in
need of medical care for a physical condition or disease for
which the need for treatment precludes the ability to comply
with the time requirements. During periods of holding and
detention authorized by this subsection, upon consent of the
individual or in the event of a medical or psychiatric
emergency, the individual may receive treatment. The
medical provider shall exercise due diligence in determining
the individual's existing medical needs and provide treatment
the individual requires, including previously prescribed
medications. As used in this section, “psychiatric
emergency” means an incident during which an individual
loses control and behaves in a manner that poses substantial
likelihood of physical harm to himself, herself or others.
Where a physician, psychologist, licensed independent
clinical social worker, physician assistant or advanced nurse
practitioner with psychiatric certification has within the
preceding seventy-two hours performed the examination
required by the provisions of this subdivision, the community
mental health center may waive the duty to perform or
arrange another examination upon approving the previously
performed examination. Notwithstanding the provisions of
this subsection, subsection (r), section four of this article
applies regarding payment by the county commission for
examinations at hearings. If the examination reveals that the
individual is not mentally ill or addicted or is determined to
be mentally ill or addicted but not likely to cause harm to
himself, herself or others, the individual shall be immediately
released without the need for a probable cause hearing and
absent a finding of professional negligence the examiner is
not civilly liable for the rendering of the opinion absent a
finding of professional negligence. The examiner shall
immediately provide the mental hygiene commissioner, circuit court or designated magistrate before whom the matter is pending the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate designated by the chief judge of the judicial circuit, the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours.

The individual must be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the Rules of Evidence of the Supreme Court of Appeals, except as provided in section twelve, article one of this chapter. At the conclusion of the hearing, the magistrate, mental hygiene commissioner or circuit court judge shall find and enter an order stating whether or not there is probable cause to believe that the individual, as a result of mental illness or addiction, is likely to cause serious harm to himself or herself or to others.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for addiction to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are
consistent with the purposes and provisions of this article. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner or circuit court judge at a probable cause hearing or at a final commitment hearing held pursuant to the provisions of section four of this article finds that the individual, as a result of mental illness or addiction, is likely to cause serious harm to himself, herself or others and because of mental illness or addiction requires treatment, the magistrate, mental hygiene commissioner or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. The agreement is to be in writing and approved by the individual, his or her counsel and the magistrate, mental hygiene commissioner or circuit court judge. If the magistrate, mental hygiene commissioner or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner or circuit court judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or addiction remains likely to cause serious harm to himself, herself or
the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of section three of this article may be entered. In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable insurance coverage, including, but not limited to, private insurance or Medicaid, the Secretary of the Department of Health and Human Resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: Provided, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: Provided, however, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate or mental hygiene commissioner may not enter an order directing treatment pursuant to a
voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

(i) If the certifying physician or psychologist determines that a person requires involuntary hospitalization for an addiction to a substance which, due to the degree of addiction, creates a reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretary of the Department of Health and Human Resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-1J-1, §15-1J-2, §15-1J-3, §15-1J-4 and §15-1J-5, all relating to the West Virginia Military Authority Act; authorizing the authority to administer programs and receive funds; and giving the authority certain powers and duties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-1J-1, §15-1J-2, §15-1J-3, §15-1J-4 and §15-1J-5, all to read as follows:

ARTICLE 1J. THE WEST VIRGINIA MILITARY AUTHORITY ACT.

§15-1J-1. Short title.

§15-1J-2. Legislative findings.


§15-1J-4. Establishment and general powers of the authority.

§15-1J-5. Employees.

§15-1J-1. Short title.

1 This article shall be known and may be cited as the West Virginia Military Authority Act.
§15-1J-2. Legislative findings.

The Legislature finds that the West Virginia National Guard is a unique entity that has a dual mission for both West Virginia and the United States. In this dual capacity, the West Virginia National Guard receives funds to administer programs, including the hiring of employees, that the federal government, including the Department of Defense, provides to the guard in support of specific activities for various federal agencies for national security and homeland security purposes. These programs fulfill specific agency purposes and necessarily require continued funding by the federal government.

Additionally, the guard continues to receive federal funding to develop and maintain capabilities to house, refurbish, rebuild and maintain military equipment and conduct other test and operational activities to support national and homeland security objectives. These activities require the guard to hire persons who will be compensated, in whole or in part, with federal funds. It is further determined and declared that it is necessary for the guard to develop and implement a procedure for hiring and management of nonmilitary employees to support its specific missions.


As used in this article, unless the content clearly indicates otherwise:

(a) “Authority” means the West Virginia Military Authority.

(b) “BRIM” means the West Virginia Board of Risk Management.
7 (c) “Guard” means West Virginia National Guard, including its Army and Air components.

9 (d) “Employee” means any person who, within the at-will employment relationship, is hired, performs duties and is paid a wage or salary which cost is, in whole or in part, reimbursed by the federal government pursuant to a contract or memorandum of understanding between the federal government and the guard.

15 (e) “PEIA” means Public Employees Insurance Act.

16 (f) “PERS” means Public Employee’s Retirement System.

§15-1J-4. Establishment and general powers of the authority.

1 (a) The West Virginia Military Authority is hereby established to administer national security, homeland security and other military-related programs that provide for the reimbursement, in whole or in part, of employee wages or salaries pursuant to a contract or memorandum of understanding between the federal government and the guard. The authority to administer programs granted in this subsection shall terminate when federal funds are no longer available to provide reimbursement of salaries or wages.

10 (b) The authority will be administered by the Adjutant General and the Adjutant General’s department.

12 (c) Funds provided by the federal government and any state funds authorized by appropriation of the Legislature used as a required match to secure federal funding for programs administered by the authority pursuant to this section shall be administered by the Adjutant General subject to the provisions of article eleven, chapter four of this code.
(d) Except as otherwise prohibited by statute, the authority, as a governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purpose of this article, including the authority to:

1. Execute cooperative agreements between the guard and the federal and/or state governments;

2. Contract on behalf of the guard with the federal government, its instrumentalities and agencies, the state, its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals;

3. Use funds administered by the authority pursuant to subsection (c) of this section for the maintenance, construction or reconstruction of capital repair and replacement items as necessary and approved by the authority;

4. Procure insurance with state funds through BRIM covering property and other assets of the authority in amounts and from insurers that BRIM determines necessary;

5. Hire employees at an appropriate salary equivalent to a competitive wage rate;

6. Enroll employees in PERS, PEIA and workers’ compensation and unemployment programs, or their equivalents: Provided, That the authority, through the receipt of federal and/or state funds, pays the required employer contributions;

7. Cooperate with economic development agencies in efforts to promote the expansion of industrial, commercial and manufacturing in the state;
§15-1J-5. Employees.

(a) The authority shall have the power to hire, administer and manage employees necessary to fulfill its responsibilities.

(1) All employees will be exempt from both the classified services category and the classified exempt services category as set forth in section four, article six, chapter twenty-nine of this code.

(2) Employee positions are contingent on the receipt of the necessary federal and/or state funds.

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.

(4) Employees will participate in the PEIA, PERS and workers’ compensation and unemployment compensation programs, or their equivalents. Public safety-related positions will continue to require dual status membership as outlined in section twenty-six, article one-b, chapter fifteen of this code.
(b) The Adjutant General will set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission.

(c) Security guards and military firefighters hired by the authority under the provisions of this article will continue to have the same authority and must meet the requirements as set forth in section twenty-two, article one-b, chapter fifteen of this code and section twenty-six of said article.

CHAPTER 147

(Com. Sub. for S.B. 536 - By Senator Kessler)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §17A-3-23 of the Code of West Virginia, 1931, as amended, relating to exempting vehicles operated by probation officers under the Supreme Court of Appeals from registration requirements for state cars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.
§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the Governor, Treasurer, three vehicles per elected office of the board of Public Works, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by conservation officers of the Division of Natural Resources, not to exceed ten vehicles operated by the arson investigators of the office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services, not to exceed sixteen vehicles operated by inspectors of the office of the Alcohol Beverage Control Commissioner and vehicles operated by probation officers employed under the Supreme Court of Appeals may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words "West Virginia" in one line and the words "State Car" in another line and the lettering for the words "State Car" shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall also be green with the number in white.

(b) On registration plates issued to vehicles owned by counties, the color shall be white on red with the word
"County" on top of the plate and the words "West Virginia" on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word "City" on top and the words "West Virginia" on the bottom: Provided, That after the thirty-first day of December, two thousand six, registration plates issued to a city or municipality law-enforcement department shall include blue lettering on a white background with the word "West Virginia" on top of the plate and shall be further designed by the commissioner to include a law-enforcement shield together with other insignia or lettering sufficient to identify the motor vehicle as a municipal law-enforcement department motor vehicle. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles. Every municipality shall provide the commissioner with a list of law-enforcement vehicles operated by the law-enforcement department of the municipality, unless otherwise provided in this section, and a fee of ten dollars for each vehicle submitted by the first day of July, two thousand six.

(c) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs’ association with the word "Sheriff" on top of the plate and the words "West Virginia" on the bottom. The plate shall contain a gold shield representing the sheriff’s star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of ten dollars for each vehicle submitted by the first day of July, two thousand two.

(d) The commissioner is authorized to designate the colors and design of any other registration plates that are
68 issued without charge to any other agency in accordance with
69 the motor vehicle laws.

70 (e) Upon application, the commissioner is authorized to
71 issue a maximum of five Class A license plates per applicant
72 to be used by county sheriffs and municipalities on
73 law-enforcement vehicles while engaged in undercover
74 investigations.

75 (f) The commissioner is authorized to issue an unlimited
76 number of license plates per applicant to authorized drug and
77 violent crime task forces in the State of West Virginia when
78 the chairperson of the control group of a drug and violent
79 crime task force signs a written affidavit stating that the
80 vehicle or vehicles for which the plates are being requested
81 will be used only for official undercover work conducted by
82 a drug and violent crime task force.

83 (g) The commissioner is authorized to issue twenty Class
84 A license plates to the Criminal Investigation Division of the
85 Department of Revenue for use by its investigators.

86 (h) The commissioner may issue a maximum of ten Class
87 A license plates to the Division of Natural Resources for use
88 by conservation officers. The commissioner shall designate
89 the color and design of the registration plates to be displayed
90 on the front and the rear of all other state-owned vehicles
91 owned by the Division of Natural Resources and operated by
92 conservation officers.

93 (i) The commissioner is authorized to issue an unlimited
94 number of Class A license plates to the Commission on
95 Special Investigations for state-owned vehicles used for
96 official undercover work conducted by the Commission on
97 Special Investigations. The commissioner is authorized to
98 issue a maximum of two Class A plates to the Division of
99 Protective Services for state-owned vehicles used by the
100 Division of Protective Services in fulfilling its mission.
(j) No other registration plate may be issued for, or
attached to, any state-owned vehicle.

(k) The Commissioner of Motor Vehicles shall have a
sufficient number of both front and rear plates produced to
attach to all state-owned cars. The numbered registration
plates for the vehicles shall start with the number "five
hundred" and the commissioner shall issue consecutive
numbers for all state-owned cars.

(l) It is the duty of each office, department, bureau,
commission or institution furnished any vehicle to have
plates as described herein affixed thereto prior to the
operation of the vehicle by any official or employee.

(m) The commissioner may issue special registration
plates for motor vehicles titled in the name of the Division of
Public Transit or in the name of a public transit authority as
defined in this subsection and operated by a public transit
authority or a public transit provider to transport persons in
the public interest. For purposes of this subsection, "public
transit authority" means an urban mass transportation
authority created pursuant to the provisions of article
twenty-seven, chapter eight of this code or a nonprofit entity
exempt from federal and state income taxes under the
Internal Revenue Code and whose purpose is to provide mass
transportation to the public at large. The special registration
plate shall be designed by the commissioner and shall display
the words "public transit" or words or letters of similar effect
to indicate the public purpose of the use of the vehicle. The
special registration plate shall be issued without charge.

(n) Any person who violates the provisions of this section
is guilty of a misdemeanor and, upon conviction thereof,
shall be fined not less than fifty dollars nor more than one
hundred dollars. Magistrates have concurrent jurisdiction
with circuit courts for the enforcement of this section.
AN ACT to amend and reenact §17A-6-1b, §17A-6-2a, §17A-6-4, §17A-6-7, §17A-6-15 and §17A-6-18a of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-6E-2 of said code; and to amend and reenact §46A-3-109 of said code, all relating to motor vehicle dealers generally; allowing the Commissioner of the Division of Motor Vehicles to enter into agreements with other states to allow out-of-state dealers to issue vehicle registrations; expanding authority of Dealer Recovery Fund Control Board to consider claims against the fund; increasing minimum bond requirement for certain dealers from ten thousand dollars to twenty-five thousand dollars; establishing minimum number of sales by a dealer prior to renewal of a dealer’s license and opportunity for appeal; exempting salespersons employed by dealers selling commercial vehicles, financial institutions and auctions from the requirement to obtain a salesperson license; requirements for issuing temporary registration plates; authorizing the commissioner to require participation in an electronic temporary plates or markers program as a precondition for issuance of temporary plates; and transferring to commissioner authority to set documentary or similar charges motor vehicle dealers may charge consumers for documentary services in relation to securing a title, with the advice of the Motor Vehicle Dealers Advisory Board.

Be it enacted by the Legislature of West Virginia:
That §17A-6-1b, §17A-6-2a, §17A-6-4, §17A-6-7, §17A-6-15 and §17A-6-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-6E-2 of said code be amended and reenacted; and that §46A-3-109 of said code be amended and reenacted, all to read as follows:

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

46A. West Virginia Consumer Credit and Protection Act.

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-1b. Dealers authorized to issue motor vehicle registration.
§17A-6-2a. Dealer recovery fund created.
§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.
§17A-6-7. When application to be made; expiration of license certificate; renewal.
§17A-6-15. Temporary registration plates or markers.
§17A-6-18a. Motor Vehicle Dealers Advisory Board.

§17A-6-1b. Dealers authorized to issue motor vehicle registration.

1 (a) Notwithstanding any other provision in this chapter, the division may allow a licensed motor vehicle dealer as defined in section one of this article, authority to issue or transfer motor vehicle registrations for vehicles sold by the dealer. The authority to issue and transfer motor vehicle
registrations shall be contingent upon the dealer collecting all fees and taxes required for the titling and registration of vehicles, receiving proof of insurance as described in subsection (e), section three, article three of this chapter, and if applicable receiving the receipt showing full payment of personal property taxes in accordance with section three-a, article three of this chapter.

(b) Authorization to issue and transfer motor vehicle registrations shall be contingent on the dealer completing an application provided by the division and meeting all criteria established by the division. The authority shall also be contingent upon the dealer agreeing to participate fully in a computerized system of electronic submission of registration, titling and lien information and all fees and taxes required under the provisions of this chapter, either directly to the division or through an authorized service provider selected and approved by the division. Any transaction conducted under the provisions of this section shall be conditional pending the determination by the division that the application for title, registration and lien recordation is complete, accurate and in accordance with the provisions of this chapter.

(c) The authority to participate in the electronic transmission of title, registration and lien information shall be immediately revoked upon revocation or cancellation of a dealer’s license issued under the provisions of this chapter: Provided, That the authority to issue and transfer motor vehicle registrations may be revoked by the division immediately and separately from any other action against the dealer’s license if the division determines that the terms of the agreement or agreements authorizing issuance, transfer or renewal of a vehicle registration or the electronic transmission of information have been violated.
(d) A fee established by the motor vehicle dealer advisory board may be charged by a motor vehicle dealer for its services required under this section.

(e) Only motor vehicle registrations of a type specified by the division may be issued, transferred or renewed by the authorized dealer.

(f) All fees and taxes collected by an authorized dealer under the provisions of this section shall be deposited in a financial institution designated by the division or the service provider in the manner prescribed by the division.

(g) The division may authorize a service provider to supply an authorized dealer with the necessary forms, supplies, registration plates and registration renewal decals necessary to enable the authorized dealer to perform the duties and functions specified in this section.

(1) Any service provider authorized to perform services under the provisions of this section shall post a bond of the applicant in the penal sum of one million dollars, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any dealer, financial institution or agency, or the State of West Virginia, with a corporate surety thereon authorized to do business in this state, which bond shall be effective as of the date on which the authorization to provide services commences.

(2) The service provider is solely responsible for the inventory, tracking, safety and reconciliation of all supplies, registration plates, registration decals or other motor vehicle credentialing items in accordance with procedures established by the division and subject to audits by the division.
(3) The division may rescind without notice the authority of a service provider to perform services when the division has cause to believe that any state or federal law has been violated or that the service provider is not adhering to the terms and conditions of the authorization agreement.

(h) The service provider and the authorized dealer assume full responsibility for the care, custody, control, disclosure and use of any information provided by the division in order to execute the duties and responsibilities required by this section. Each service provider and each authorized dealer agrees to ensure that the disclosure of information to it and its handling of information received from the division complies with all federal and state statutes and division directives governing the disclosure and protection of such information.

(i) The commissioner may enter into agreements with other states and jurisdictions granting licensed dealers regulated by other states and jurisdictions the authority to issue or transfer motor vehicle registrations for vehicles sold by the dealer in the same manner as dealers licensed by this state.

§17A-6-2a. Dealer recovery fund created.

(a) There is hereby created a special fund in the State Treasury which is to be designated the "Dealer Recovery Fund." The fund shall consist of certain moneys received from persons engaged in the business of selling new or used motor vehicles, new or used motorcycles, trailers, semi-trailers or recreational vehicles or from grants, gifts, bequests or awards arising out of the settlement or adjudication of a claim. The fund is not to be treated by the Auditor and Treasurer as part of the general revenue of the state. The fund is to be a special revolving fund paid out upon order of the Commissioner of Motor Vehicles based on the recommendation of the dealer recovery fund control
board created in this section, solely for the purposes specified in this section. The commissioner may use up to one percent of funds from the dealer recovery fund for the administrative expenses of operating the dealer recovery fund program.

(b) The dealer recovery fund control board shall consist of the Commissioner of Motor Vehicles or his or her designee, the Attorney General’s designee representing the Office of Consumer Protection and one representative selected by the motor vehicle dealer's advisory board. The Commissioner of Motor Vehicles or his or her designee shall serve as chair and the board shall meet at least once a year during the month of July, and as required by the commissioner. The commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate the provisions of this section. The commissioner may employ the necessary staff needed to operate the program. The board may prorate the amount paid on claims when the amount of valid claims submitted would exceed thirty-three percent of the fund. However, claims presented by the Division of Motor Vehicles for taxes and fees shall be paid in full. The board may purchase insurance at a cost not to exceed one percent of the fund to cover extraordinary or excess claims from the fund.

(c) Every applicant for either an original dealer license or renewal of an existing dealer license of the type enumerated in subsection (a) of this section shall pay, in addition to any other license fee, an annual dealer recovery fund fee of one hundred fifty dollars. All dealers shall continue to maintain a surety bond as required by this article and the dealer recovery fund payment unless exempt by one of the following requirements:

(1) Any dealer who, for the three years immediately preceding assessment of the fees, has not had a claim paid
against their bond or against the dealer recovery fund, whose
license has not been suspended or revoked and who has not
been assessed any civil penalties is not required to continue
to keep the bond required by this article. However, no dealer
can submit a claim against the fund unless it has contributed
to the fund for at least three years.

(2) If the dealer recovery fund reaches or exceeds the
amount of three million dollars as of the first day of July of
any year, a dealer who meets the requirements of subdivision
(1) of this subsection, is exempt from payment of the annual
dealer recovery fund fee. However, if the fund should, as of
the first day of April of any year, drop below three million
dollars, all dealers, regardless of any previous exemption
shall pay the annual dealer recovery fee of one hundred fifty
dollars. The exemption prescribed in subdivision (1) of this
subsection remains in effect regardless of the status of the
fund.

(d) The dealer recovery fund control board may consider
payment only after any dealer surety bond required pursuant
to the provisions of section four of this article has been
exhausted.

(e) When the fund reaches two hundred fifty thousand
dollars, the board shall consider claims for payment.

(f) Claims against the fund are not to be made for any act
or omission which occurred prior to the first day of July, two
thousand two.

(g) Claims for payment shall be submitted within six
months of the date of sale or the date the division is made
aware of the claim.

(h) The board shall pay claims in the following order:
(1) Claims submitted by the Division of Motor Vehicles for unpaid taxes and fees;

(2) Claims submitted by a retail purchaser of a vehicle from a dealer covered by the fund with an undisclosed lien or a retail purchaser of a vehicle from a dealer covered by the fund who finds that the lien on the vehicle traded in has not been satisfied by the selling dealer if the lien satisfaction was a condition of the purchase agreement;

(3) Claims submitted by a motor vehicle dealer contributing to the fund, which has purchased a vehicle or vehicles from another dealer covered by the fund with an undisclosed lien;

(4) Claims submitted by a retail purchaser of third party goods or services from a dealer covered by the fund for the unpaid charges when the dealer fails to pay the third party for the goods or services; or

(5) Claims submitted by the Division of Motor Vehicles, a retail purchaser or a motor vehicle dealer contributing to the fund, not authorized by subdivisions (1) through (4) of this subsection, but otherwise payable under the bond described in section four of this article, may be considered for payment by the board up to the amount of fifty thousand dollars for each licensing year the West Virginia dealer that is the subject of the complaint did not maintain the bond: Provided, That the board may not consider claims submitted by or on behalf of a financial institution for money owed by a dealer upon a loan to a dealer or credit extended to a dealer that is secured by a lien upon the inventory of the dealer, commonly referred to as a floor planner.

(i) The maximum claim against the fund for any unpaid lien of a used vehicle is the unpaid balance of the lien up to the loan value of the vehicle as of the date of the sale or other
transaction as shown by a generally accepted motor vehicle
value guide. The maximum claim against the fund for any
new or unused vehicle is the amount of the invoice less any
amounts rebated or to be rebated to the dealer from the
manufacturer. Payment is only to be made to a secured party
who agrees to accept payment from the dealer recovery fund
and who accepts the payment in full settlement of any claims,
and who releases the lien and the title, if applicable, prior to
receiving payment. Any dealer who agrees to accept
payment from the dealer recovery fund shall release the title
prior to receiving payment.

(j) On payment by the board to a claimant from the fund,
the board shall immediately notify the licensee against whom
a claim was paid and request full reimbursement within thirty
days of notification. If a dealer fails to fully reimburse the
board within the specified period of time, the commissioner
shall immediately and without prior hearing revoke the dealer
license of dealer against whom the claim was paid. No
applicant with an unpaid claim is eligible for renewal or
relicensure until the full amount of the reimbursement plus
interest as determined by the board is paid to the fund.
Nothing in this section shall limit the authority of the
commissioner to suspend, revoke or levy civil penalties
against a dealer, nor shall full repayment of the amount owed
to the fund necessarily nullify or modify the effect of any
action by the commissioner.

(k) Nothing in this section shall limit the right for any
person to seek relief though civil action against any other
person.

(l) The provisions of this section do not apply to those
class DTR dealers in the business of selling manufactured
housing and covered by the state manufactured housing
recovery fund established by the Division of Labor pursuant
to a legislative rule.
§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by section three of this article shall be made on a form prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of the vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each vehicle, as follows:

Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, the application shall disclose, but not be limited to, the following:

(1) The type of business for which a license certificate is sought;

(2) If the applicant is an individual, the full name and address of the applicant and any trade name under which he or she will engage in the business;

(3) If the applicant is a copartnership, the full name and address of each partner in the copartnership, the name of the...
copartnership, its post office address and any trade name under which it will engage in the business;

(4) If the applicant is a corporation, its name, the state of its incorporation, its post office address and the full name and address of each officer and director of the corporation;

(5) The location of each place in this state at which the applicant will engage in the business and whether the business is owned or leased by the applicant;

(6) Whether the applicant, any partner, officer or director of the business has previously engaged in the business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;

(7) Whether the applicant, any partner, officer, director or employer of the business has previously applied for a license certificate under the provisions of this article or a similar license certificate in this or any other state, and if so, whether the license certificate was issued or refused and, if issued, whether it was ever suspended or revoked;

(8) A statement of previous general business experience and the past history of the applicant; and

(9) Any other information that the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of the business, and any criminal record of the applicant if an individual, or of each partner if a copartnership, or of each officer and director, if a corporation.

(c) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, the
application shall, in addition to the matters outlined in subsection (b) of this section disclose:

(1) The make or makes of new motor vehicles which the applicant will offer for sale in this state during the ensuing fiscal year; and

(2) The exact number of new and used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no new and used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of new and used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(d) In the case of an application for a license certificate to engage in the business of used motor vehicle dealer, the application shall in addition to the matters outlined in subsection (b) of this section, disclose the exact number of used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(e) In the case of an application for a license certificate to engage in the business of trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker/dismantler/rebuilder, the application shall disclose any information that the commissioner may reasonably require.

(f) The application shall be verified by the oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or
officer thereof, as the case may be. Except as provided in section two-a of this article, the application shall be accompanied by a bond of the applicant in the penal sum of twenty-five thousand dollars, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of his or her business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any purchaser, seller or financial institution or agency, or the State of West Virginia, with a corporate surety thereon authorized to do business in this state. The bond shall be effective as of the date on which the license certificate sought is issued.

(g) Upon receipt of any fully completed application, together with any bond required under subsection (f) of this section, the certificate of insurance as required in subsection (a) of this section and the appropriate fee provided in section ten of this article, the commissioner may conduct any investigation he or she considers necessary to determine the accuracy of any statements contained in the application and the existence of any other facts which he or she considers relevant in considering the application. To facilitate the investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed twenty days.

(h) Any application for a license certificate under the provisions of this article and any information submitted with the application is confidential for the use of the division. No person shall divulge any information contained in any application or any information submitted with the application except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

§17A-6-7. When application to be made; expiration of license certificate; renewal.
(a) Every license certificate issued in accordance with the provisions of this article shall, unless sooner suspended or revoked, expire on the thirtieth day of June next following the issuance thereof.

(b) A license certificate may be renewed each year in the same manner, for the same fee as prescribed in section ten of this article and upon the same basis as an original license certificate is issued under section six of this article: Provided, That the commissioner may not renew the license of any new or used motor vehicle dealer who has sold less than eighteen vehicles during the preceding year subject to the following:

1. This proviso does not apply to a dealer in the business of selling commercial motor vehicles of a gross vehicle weight of twenty-six thousand one pounds or more;

2. The commissioner may approve the renewal of a dealer selling less than eighteen vehicles based on a finding of extenuating circumstances including, but not limited to, the illness of the dealer, adverse business conditions or sales credited to other types of dealer licenses held by the dealer; and

3. Any dealer may appeal the commissioner’s refusal to the Motor Vehicle Dealers Advisory Board which may consider extenuating circumstances and approve the renewal.

All applications for the renewal of any license certificate shall be filed with the commissioner at least thirty days before the expiration thereof. Any application for renewal of any license certificate not filed at least thirty days before the expiration may not be renewed except upon payment of the same fee as an original license certificate as prescribed in subsection (a), section ten of this article. The commissioner may allow the delinquent applicant to complete an
§17A-6-15. Temporary registration plates or markers.

(a) In order to permit a vehicle which is sold to a purchaser by a dealer to be operated on the streets and highways pending receipt of the annual registration plate from the division for such vehicle, the commissioner may, subject to the limitations and conditions hereinafter set forth, deliver temporary vehicle registration plates or markers to dealers who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to purchasers of vehicles, but such purchasers must comply with the pertinent provisions of this section.

(b) Application by a dealer to the commissioner for temporary registration plates or markers shall be made on the form and in the manner prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of three dollars for each such temporary registration plate or marker. The commissioner may require the fee to be remitted to the division in an electronic format. No refund or credit of fees paid by dealers to the commissioner for temporary registration plates or markers shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, dealers returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof. No temporary registration plates or markers shall be delivered by the commissioner to any dealer in house trailers only, and no such temporary plates or markers shall be issued for or used on any house trailer for any purpose.

(c) Every dealer who has made application for and received temporary registration plates or markers shall maintain in a manner prescribed by the commissioner, a
31 record of all temporary registration plates or markers issued by him or her, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Every dealer who issues a temporary registration plate or marker shall notify the division in the manner prescribed by the commissioner. No temporary registration plates or markers may be delivered to any dealer until such dealer has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such dealer, by showing the number issued to purchasers by such dealer and any on hand.

(d) A dealer may not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bona fide purchaser of the vehicle to be registered; nor may a dealer issue a temporary registration plate or marker to anyone possessed of an annual registration plate for a vehicle which has been sold or exchanged, except a dealer may issue a temporary registration plate or marker to the bona fide purchaser of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the division to exchange such annual registration plate of a different class in accordance with the provisions of section one, article four of this chapter; nor may a dealer lend to anyone, or use on any vehicle which he or she may own, a temporary registration plate or marker. It is unlawful for any dealer to issue any temporary registration plate or marker knowingly containing any misstatement of fact, or knowingly to insert any false information upon the face thereof.

(e) Every dealer who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker in the manner prescribed by the commissioner, the date of issuance and expiration thereof, and the make and motor or serial number of the vehicle for which issued.
(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by a dealer, he or she may suspend the right of such dealer to issue temporary registration plates or markers.

(g) Every person to whom a temporary registration plate or marker has been issued shall permanently destroy such temporary registration plate or marker immediately upon receiving the annual registration plate for such vehicle from the division: Provided, That if the annual registration plate is not received within sixty days of the issuance of the temporary registration plate or marker, the owner shall, notwithstanding the fact that the annual registration plate has not been received, immediately and permanently destroy the temporary registration plate or marker: Provided, however, That not more than one temporary registration plate or marker shall be issued to the same bona fide purchaser for the same vehicle.

(h) A temporary registration plate or marker shall expire and become void upon the receipt of the annual registration plate from the division or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of sixty days from the date of issuance, depending upon whichever event shall first occur.

(i) For the purpose of this section, the term "dealer" includes a wrecker/dismantler/rebuilder and in the context of issuing temporary registration plates, any other business licensed by the division in accordance with the provisions of this chapter and authorized to issue temporary registration plates or markers.

(j) The commissioner may require participation in an electronic temporary plate issuance system by all dealers as a precondition for authority for a dealer to issue temporary license plates or markers.
§17A-6-18a. Motor Vehicle Dealers Advisory Board.

(a) There is continued a Motor Vehicle Dealers Advisory Board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules or policies regarding the motor vehicle industry; to advise the commissioner on setting documentary charges or similar charges motor vehicle dealers may charge consumers for documentary services in relation to securing a title, which such charges the commissioner is hereby granted authority to set; and to give the commissioner any further advice and assistance as he or she may, from time to time, require.

The board shall consist of nine members and the Commissioner of Motor Vehicles, or his or her representative, who shall be an ex officio member. Two members shall represent new motor vehicle dealers, with one of these two members representing dealers that sell less than one hundred new vehicles per year; one member shall represent used motor vehicle dealers; one member shall represent wrecker/dismantler/rebuilders; one member shall represent automobile auctions; one member shall represent recreational dealers; one member shall represent the West Virginia Attorney General’s office; and two members shall represent consumers. All of the representatives, except the Attorney General representative who shall be designated by the Attorney General, shall be appointed by the Governor with the advice and consent of the Senate, with no more than five representatives being from the same political party.

The terms of the board members shall be for three years. The attorney general representative shall serve continuously.

The board shall meet at least four times annually and at the call of the commissioner.
(b) The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction or a license service to revoke or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.

(c) The commissioner may consult with the board by mail, by facsimile, by telephone or at a meeting of the board, but the commissioner is not bound by the recommendations of the board. The commissioner shall give members seven days from the date of a mailing or other notification to respond to proposed actions, except in those instances when the commissioner determines that the delay in acting creates a serious danger to the public’s health or safety or would unduly compromise the effectiveness of the action.

(d) No action taken by the commissioner is subject to challenge or rendered invalid on account of his or her failure to consult with the board.

(e) The appointed members shall serve without compensation, however, members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in legitimate board activities in accordance with the guidelines of the Travel Management Office of the Department of Administration or its successor agency.

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.


The following words as used in this article, unless the context otherwise requires, have the following meanings:

(1) "Applicant" means any person making application for an original or renewal of a salesperson license;
(2) "Dealer" means any motor vehicle or auction business regulated under the provisions of article six or six-c of this chapter;

(3) "Licensee" means any person holding a license issued under the provisions of this article;

(4) "Motor vehicle salesperson" or "salesperson" means any person employed by a dealer to sell, buy, display and offer for sale or deal in motor vehicles, recreational vehicles or trailers, as those terms are defined in section one of article one of this chapter, for a commission or other valuable consideration, but does not mean any public officer performing his or her official duties or the dealer licensee. A person employed by a dealer as a finance and insurance representative is for the purposes of this article a salesperson. For the purposes of this article, the term “motor vehicle salesperson” does not apply to persons employed by a dealer in the business of selling commercial motor vehicles with a gross vehicle weight of twenty-six thousand one pounds or more, employees of financial institutions or to businesses licensed as auctions.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

(a) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for
3 and receive the following additional charges in connection
4 with a consumer credit sale or a consumer loan:

5 (1) Official fees and taxes;

6 (2) Charges for insurance as described in subsection (b)
7 of this section: Provided, That nothing contained in this
8 section with respect to insurance in any way limits the power
9 and jurisdiction of the Insurance Commissioner of this state
10 in the premises;

11 (3) Annual charges, payable in advance, for the privilege
12 of using a lender credit card or similar arrangement which
13 entitles the user to purchase goods or services from at least
14 one hundred persons not related to the issuer of the lender
15 credit card or similar arrangement, under an arrangement
16 pursuant to which the debts resulting from the purchases are
17 payable to the issuer;

18 (4) Charges for other benefits, including insurance,
19 conferred on the consumer, if the benefits are of value to him
20 or her and if the charges are reasonable in relation to the
21 benefits, are of a type which is not for credit and are excluded
22 as permissible additional charges from the sales finance
23 charge or loan finance charge by rule adopted by the
24 commissioner: Provided, That as to insurance, the policy as
25 distinguished from a certificate of coverage thereunder may
26 only be issued by an individual licensed under the laws of
27 this state to sell the insurance and the determination of
28 whether the charges therefor are reasonable in relation to the
29 benefits shall be determined by the Insurance Commissioner
30 of this state;

31 (5) Reasonable closing costs with respect to a debt
32 secured by an interest in land; and
(6) Documentary charge or any other similar charge for
documentary services in relation to securing a title, so long
as said charge is applied equally to cash customers and credit
customers and there is a reasonable relationship between said
charge and the benefit conferred on the customer.

(b) A creditor may take, obtain or provide reasonable
insurance on the life and earning capacity of any consumer
obligated on the consumer credit sale or consumer loan,
reasonable insurance on any real or personal property offered
as security subject to the provisions of this subsection and
section one hundred nine-a of this article and vendor’s or
creditor’s single interest insurance with respect to which the
insurer has no right of subrogation. Only one policy of life
insurance and/or one policy of health and accident insurance
and/or one policy of accident insurance and/or one policy of
loss of income insurance on any one consumer may be in
force with respect to any one contract or agreement at any
one time, but one policy may cover both a consumer and his
or her spouse:

(1) The amount, terms and conditions of property
insurance shall have a reasonable relation to the existing
hazards or risk of loss, damage or destruction and be
reasonable in relation to the character and value of the
property insured or to be insured; and the term of the
insurance shall be reasonable in relation to the terms of
credit: Provided, That nothing may prohibit the consumer
from obtaining, at his or her option, greater coverages for
longer periods of time if he or she so desires;

(2) Life insurance shall be in an initial amount not to
exceed the total amount repayable under the consumer credit
agreement, and where a consumer credit sale or consumer
loan is repayable in installments, such insurance may at no
time exceed the scheduled or actual amount of unpaid
indebtedness, whichever is greater. Life insurance authorized
by this subdivision shall provide that the benefits be paid to
the creditor to reduce or extinguish the unpaid indebtedness:
Provided, That if a separate charge is made for the insurance
and the amount of insurance exceeds the unpaid
indebtedness, where not prohibited, then the excess is
payable to the estate of the consumer. The initial term of the
life insurance in connection with a consumer credit sale,
other than a sale pursuant to a revolving charge account, or
in connection with a consumer loan, other than a loan
pursuant to a revolving loan account, may not exceed the
scheduled term of the consumer credit agreement by more
than fifteen days. The aggregate amount of periodic benefits
payable by credit accident and health insurance in the event
of disability, as defined in the policy, and loss of income
insurance in the event of involuntary loss of employment, as
defined in the policy, may not exceed the unpaid amount of
such indebtedness; periodic benefits payable in connection
with a consumer credit sale pursuant to a revolving charge
account or of a consumer loan pursuant to a revolving loan
account may be based upon the authorized credit limit;

(3) When the insurance is obtained or provided by or
through a creditor, the creditor may collect from the
consumer or include as part of the cash price of a consumer
credit sale or as part of the principal of a consumer loan or
deduct from the proceeds of any consumer loan the premium
or, in the case of group insurance, the identifiable charge.
The premium or identifiable charge for the insurance required
or obtained by a creditor may equal, but may not exceed the
premium rate filed by the insurer with the insurance
commissioner. In any case when the creditor collects the
entire premium for such insurance in advance, the premium
shall be remitted by the creditor to the insurer or the
insurance agent, as specified by the insurer, within ten days
from or after the end of the month in which the collection
was made;
(4) With respect to insurance against loss of or damage to property or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor setting forth the cost of the insurance if obtained from or through the creditor and stating that the debtor may choose the person through whom the insurance is to be obtained;

(5) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor may require a consumer to purchase the insurance or to purchase the insurance from the creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer;

(6) When a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving the payment shall inform the debtor of the cancellation of any consumer credit insurance providing life, accident, health or loss of income coverage and advise the debtor of the application of any unearned premiums to the loan balance. Notices required by this subdivision shall be made in the following manner:

(A) If the insurance was not sold or provided by the creditor, the creditor receiving the payment shall notify the debtor that he or she may have the right to receive a refund of unearned premiums from any other seller or provider of the insurance and advise the debtor of his or her obligation to notify any other insurer of the payment of the loan balance and the cancellation of the consumer credit insurance and request a refund or credit of unearned premiums, if applicable. Such notice shall be sent on a form as prescribed by the Insurance Commissioner as provided in chapter twenty-nine-a of this code and shall contain the name and address of the seller and the insurer; or
(B) If the creditor was the seller or provider of the consumer credit insurance, the creditor shall:

(i) Notify the insurer or shall cause the insurer to be notified of the cancellation of such insurance; and

(ii) Notify the debtor of the cancellation of the insurance and of the application of any unearned premiums to the loan balance, which notice may be on a form consistent with the general course of business of the creditor;

(7) Upon receipt by the insurer of notification of the cancellation of consumer credit insurance, the insurer shall cancel the insurance effective no later than thirty days from the date of receipt of the notice. Within forty-five days following the date of notification of cancellation of the insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer; and

(8) An insurer, seller or creditor who fails to refund any unused insurance premium or provide the proper notification of payoff is liable for civil damages up to three times the amount of the unused premium as well as other remedies as provided by section one hundred nine, article seven of this chapter.

(c) The Insurance Commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance and the authority of the Insurance Commissioner to promulgate the rules is exclusive notwithstanding any other provisions of this code to the contrary.
AN ACT to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to extending the weekend time period for the operation of antique motor vehicles and antique motorcycles for recreational purposes.

Be it enacted by the Legislature of West Virginia:

That §17A-10-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration and use of classic motor vehicles and classic motorcycles.

(a) The annual registration fee for any antique motor vehicle or motorcycle as defined in this section is two dollars. "Antique motor vehicle" means any motor vehicle which is more than twenty-five years old and is owned solely as a collector's item. "Antique motorcycle" means any motorcycle which is more than twenty-five years old and is owned solely as a collector's item.

"Classic motor vehicle" means a motor vehicle which is more than twenty-five years old and is registered pursuant to
"Classic motorcycle" means a motorcycle which is more than twenty-five years old and is registered pursuant to section three of this article and is used for general transportation.

(b) Except as otherwise provided in this section, antique motor vehicles or motorcycles may not be used for general transportation but may only be used for:

(1) Participation in club activities, exhibits, tours, parades and similar events;

(2) The purpose of testing their operation, obtaining repairs or maintenance and transportation to and from events as described in subdivision (1); and

(3) Recreational purposes over weekends, beginning on Friday at twelve o’clock noon, and ending on the following Monday at twelve o’clock noon, and on holidays: Provided, That a classic motor vehicle or a classic motorcycle as defined in this section may be registered under the applicable class at the applicable registration fee set forth in section three of this article and may be used for general transportation.

(c) A West Virginia motor vehicle or motorcycle displaying license plates of the same year of issue as the model year of the antique motor vehicle or motorcycle, as authorized in this section, may be used for general transportation purposes if the following conditions are met:

(1) The license plate’s physical condition has been inspected and approved by the Division of Motor Vehicles;

(2) The license plate is registered to the specific motor vehicle or motorcycle by the Division of Motor Vehicles;
(3) The owner of the motor vehicle or motorcycle annually registers the motor vehicle or motorcycle and pays an annual registration fee for the motor vehicle or motorcycle equal to that charged to obtain regular state license plates; and

(4) The motor vehicle or motorcycle passes an annual safety inspection; and

(5) The motor vehicle or motorcycle displays a sticker attached to the license plate, issued by the division, indicating that the motor vehicle or motorcycle may be used for general transportation.

(d) If more than one request is made for license plates having the same number, the division shall accept only the first application.

(e) The commissioner may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code as may be necessary or convenient for the carrying out of the provisions of this section.

CHAPTER 150

(Com. Sub. for H.B. 4515 - By Delegates Webster, Long, Mahan, Brown, Hrutkay, Staggers, Varner and Guthrie)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-3-13, relating to reports by health care providers of persons incompetent to drive an automobile.
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 §17B-3-13, to read as follows:

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-13. Reports by health care providers.

(a) Health care providers licensed and authorized pursuant to chapter thirty of the code to diagnose or treat diseases, disorders, disabilities or conditions, may notify the division in writing of the full name, date of birth and address of every person fifteen years of age or older who suffers from a physical or mental disease, disorder, disability, condition or symptoms that prevents the person from safely operating motor vehicle, and which is either:

(1) Uncontrollable (either through medication, therapy, or surgery; or by driving device or technique);

(2) Controllable, but the patient does not comply with the recommendations of the health care provider for treatment or restricted driving; or

(3) Undiagnosed but the extent of driver impairment is potentially significant based on the patient’s symptoms.

(b) Reports, recommendations or opinions, findings or advice received or made by the division for the purpose of determining whether a person is qualified to be licensed to drive are for the confidential use of the division and exempt from provisions of article one, chapter twenty-nine-b of this code and may only be admitted in proceedings to either suspend, revoke or impose limitations on the use of a driver’s license pursuant to section six, subsection (a)(5), article three, chapter seventeen-b of this code or section seven, article
three, chapter seventeen-b of this code, or to reinstate the driver’s license.

(c) Reports, recommendations, opinions, findings or advice received or made by the division for the purpose of determining whether a person is qualified to be licensed to drive may not be used in any proceedings to establish or prove competencies other than qualifications to operate a vehicle.

(d) A health care provider who makes a notification pursuant to subsection (a) shall be immune from any civil, administrative or criminal liability that otherwise might be incurred or imposed because of such notification if the health care provider has:

(1) Documented in the patient’s record the disease, disorder, disability, condition or symptoms which may impair the patient’s ability to drive a motor vehicle to a degree that precludes the safe operation of a motor vehicle;

(2) Informed the patient that their disease, disorder, disability, condition or symptoms may impair the patient’s ability to drive a motor vehicle to a degree that precludes the safe operation of a motor vehicle;

(3) Advised the patient that he or she should not operate a motor vehicle; and

(4) Disclosed to the patient that the health care provider may notify the Commissioner of the patient’s condition and of the patient’s inability to safely operate a motor vehicle.

(e) Compliance with or failure to comply with the requirements of this section does not constitute negligence, nor may compliance or noncompliance with the requirements of this section be admissible as evidence of negligence in any civil or criminal action.
AN ACT to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to allowing certain vehicles designated for emergency response or emergency management to use red flashing warning lights.

Be it enacted by the Legislature of West Virginia:

That §17C-15-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible
from directly in front of the center of the vehicle except as authorized by subsection (d) of this section.

(c) Except as authorized in subsections (d) and (f) of this section and authorized in section nineteen of this article, flashing lights are prohibited on motor vehicles: Provided, That any vehicle as a means for indicating right or left turn or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by section nineteen of this article, red flashing warning lights are restricted to 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;

(K) West Virginia Department of Agriculture emergency response vehicles;

(L) Vehicles designated by the Secretary of the Department of Military Affairs and Public Safety for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of Homeland Security and Emergency Management; and

(M) Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Military Affairs and Public Safety and the county commission of the county of residence.

Red flashing warning lights attached to a Class A vehicle may 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 is 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.

(K) Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the Department of Military Affairs and Public Safety.

(L) Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Military Affairs and Public Safety and the county commission of the county of residence.

(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;

(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 is 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 152

(Com. Sub. for H.B. 4389 - By Delegates Webster, Stemple, Hrutkay, Fleischauer, Lane, Long, Shook, Longstreth, Miley and Ellem)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact § 17C-19-3 of the Code of West Virginia, 1931, as amended, relating to removing the requirement that resident violators of certain traffic laws be
required to sign citations or notices to appear in court as written promises to appear in court as a condition of release from custody.

Be it enacted by the Legislature of West Virginia:

That §17C-19-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL COURTS.

§17C-19-3. When person arrested must be taken immediately before a magistrate or court.

(a) Whenever any person is arrested for any violation of this chapter punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

(1) When a person arrested demands an immediate appearance before a magistrate or court;

(2) When the person is arrested upon a charge of negligent homicide;

(3) When the person is arrested upon a charge of driving while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug, or under the combined influence of alcohol and any controlled substance or any other drug;

(4) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injury or damage to property;
(5) When the person is arrested upon a charge of violating section fourteen, article seventeen of this chapter relating to weight violations, except as otherwise provided in that section;

(6) When the person arrested is a resident of a state that has not entered into a nonresident violator compact with this state;

(7) In any other event when the person arrested refuses to accept the written notice to appear in court as his or her promise to appear in court or to comply with the terms of the written notice to appear in court as provided in section four of this article.

(b) When the person arrested is a resident of a state that has entered into a nonresident violator compact with this state, the arresting officer shall issue the person a written notice as provided for in section four of this article and may not take the person immediately before a magistrate or court, except under the terms of the compact or under the circumstances set forth in subsection (a) of this section.

CHAPTER 153

(Com. Sub. for H.B. 4156 - By Delegates Morgan, Craig, Palumbo, Klempa, Hutchins and Higgins)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §8-12-16 of the Code of West Virginia, 1931, as amended, relating to authorizing municipalities to place a lien on property in an amount that
reflections the costs incurred by the municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building on the property.

Be it enacted by the Legislature of West Virginia:

That §8-12-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

(a) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

(b) The governing body in formally adopting the ordinances shall designate the enforcement agency, which shall consist of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to
serve at the will and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex officio members of the enforcement agency.

(c) Any ordinance adopted pursuant to the provisions of this section must provide fair and equitable rules of procedure and any other standards deemed necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, and in conducting hearings: Provided, That any entrance upon premises for the purpose of making examinations is made in a manner as to cause the least possible inconvenience to the persons in possession.

(d) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner or owners of any dwelling or building under determination of the State Fire Marshal, as provided in section twelve, article three, chapter twenty-nine of this code, or under order of the enforcement agency of the municipality, to pay for the costs of repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building.

(e) Every municipality:

(1) May file a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building; and

(2) May institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.
(f) Not less than ten days prior to instituting a civil action as provided for in this section, the governing body of the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

(g) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the governing body shall cause a Class III-0 legal advertisement to be published in a newspaper of general circulation in the county wherein the subject property is located and post notice on the front door or other conspicuous location on the subject property.

(h) If any landowner desires to contest any demand brought forth pursuant to this section, the landowner may seek relief in a court of competent jurisdiction.

(i) All orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and, be posted in a conspicuous place on the premises affected by the complaint or order:  

Provided, That no ordinance may be adopted without providing for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause.

(j) In the event such application is made, a hearing thereon shall be had within twenty days, or as soon thereafter as possible, and the court shall enter such final order or decree as the law and justice may require.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-16a, relating to uninhabitable property in municipalities; authorizing municipalities to establish property registration and assess fees by ordinance; procedures and requirements for the property registration and fees; establishing appeal process; and process for delinquent fees.

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 §8-12-16a, to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16a. Registration of uninhabitable property.

(a) The governing body of a municipality may, by ordinance, establish a property registration for any real
property improved by a structure that is uninhabitable and violates the applicable building code adopted by the municipality. An owner of real property subject to the registration shall be assessed a fee as provided by the ordinance.

(b) The mayor of the municipality shall appoint a code enforcement officer to investigate and determine whether real property violates provisions of the applicable building code of the municipality.

(c) After inspecting the property, if the officer determines the property is uninhabitable and violates the applicable building code, then:

(1) The officer shall post a written notice on the property which shall include:

(A) An explanation of the violation(s);

(B) A description of the registration;

(C) The date the fee will be assessed;

(D) An explanation of how to be removed from the registration;

(E) An explanation of the appeals process; and

(F) A statement that if the fee is not paid, then the property is subject to forfeiture; and

(2) Within five business days of the inspection and the posting of the property, the officer shall, by certified mail, send a copy of the notice that was posted to the owner(s) of the property at the last known address according to the county property tax records.
(d) Within forty-five days of receipt of the notification by the owner(s), the property owner may:

1. Make and complete any repairs to the property that violate the applicable building code; or
2. Provide written information to the officer showing that repairs are forthcoming in a reasonable period of time.

(e) After the repairs are made, the owner may request a reinspection of the property to ensure compliance with the applicable building code. If the officer finds the violations are fixed, the owner is not subject to the registration and no fee will be incurred.

(f) The officer may reinspect the property at any time to determine where in the process the repairs fall.

(g) Within ninety days of receipt of the notification by the owner(s), the property owner has the right to appeal the decision of the officer to the enforcement agency, created in section sixteen, article twelve of this chapter.

(h) If an appeal is not filed within ninety days, the property is registered and the fee is assessed to the owner(s) on the date specified in the notice. The notice of the fee shall be recorded in the office of the clerk of the county commission of the county where the property is located and if different, in the office of the clerk of the county commission of the county where the property is assessed for real property taxes.

(i) If the enforcement agency affirms the registration and assessment of the registration fee, the property owner has the right to appeal the decision of the enforcement agency to the circuit court within thirty days of the decision. If the decision
is not appealed in a timely manner to the circuit court, then
the property is registered and the fee is assessed on the date
specified in the notice. The notice of the fee shall be
recorded in the office of the clerk of the county commission
of the county where the property is located and if different,
in the office of the clerk of the county commission of the
county where the property is assessed for real property taxes.

(j) A fee assessed under this section shall be recorded in
the same manner as a lien is recorded in the office of the
clerk of the county commission of the county.

(k) If the fee is paid, then the municipality shall record a
release of the fee in the office of the clerk of the county
commission of the county where the property is located and
if different, in the office of the clerk of the county
commission of the county where the property is assessed for
real property taxes.

(l) If an owner fails to pay the fee, then the officer shall
annually post the written notice on the property and send the
written notice to the owner(s) by certified mail.

(m) If a registration fee remains delinquent for two years
from the date it was placed on record in the clerk of the
county commission in which the property is located and
assessed, the municipality may take action to receive the
subject property by means of forfeiture. Should the
municipality take the steps necessary to receive the subject
property, the municipality then becomes the owner of record
and takes the property subject to all liens and real and
personal property taxes.
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 contracts granting long-term usage and related rights and privileges to third parties sufficient to attract private investment for the financing, construction and operation of additional lodging units at Stonewall Jackson Lake State Park; establishing requirements and restrictions regarding the development, operation and maintenance of additional lodging units and all contracts related to the additional lodging units; requiring the development of a lodging unit development plan that is to be presented to the Joint Committee on Government and Finance prior to development; and protecting the state from any liabilities or obligations associated with the development of the additional lodging units.

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.
(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:

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, except as otherwise provided in this section;

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 the 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) Except as otherwise authorized by this section, no extension or renewal beyond the original twenty-five year term may be executed by the director absent the approval of the Joint Committee on Government and Finance.

(e) Stonewall Jackson Lake State Park. --

(1) With respect to the financing, construction and operation of lodging at Stonewall Jackson Lake State Park, in addition to the lodging in existence as of the first day of July, two thousand eight, contracts entered into pursuant to this section may grant, convey or provide for commercially reasonable lodging usage and related rights and privileges all on terms and conditions as the director may deem appropriate, desirable or necessary to attract private investment for the construction of additional lodging units.

(2) No contracts may be entered into prior to the preparation of lodging unit development plans and standard lodging unit contract documents in a form and at a level of detail acceptable to the United States Army Corps of Engineers and the director, and subsequent to the presentation of the lodging unit development plans and standard lodging unit contract documents to the Joint Committee on Government and Finance for review and comment.

(3) At a minimum, the lodging unit development plans and standard lodging unit contracts shall comply with the following requirements:

(A) That no more than one hundred additional lodging units may be constructed, in addition to the lodging in existence as of the first day of July, two thousand eight;
(B) That lodging unit contracts, with respect to any additional lodging units that may be financed, constructed or operated pursuant to the provision of this section, shall generally conform to the contracts entered into by federal agencies or the National Park Service with private parties regarding privately financed property that is constructed, developed or operated on public lands administered by federal agencies or the National Park Service, subject to modification and adaptation by the director as the director deems appropriate, suitable and relevant to any lodging units to be constructed at Stonewall Jackson Lake State Park.

(C) That a party granted rights and privileges under lodging unit contracts awarded under the provisions of this subsection shall have the right to renew his, her or its lodging unit contract for successive terms not to extend beyond the termination date of the state’s lease with the United States Army Corps of Engineers; or, in the event that the state’s lease with the United States Army Corps of Engineers is extended beyond the termination date of the lease as of the first day of July, two thousand seven, not to exceed five ten-year extensions or renewals beyond the termination date of the lease between the state and the United States Army Corps of Engineers in effect as of the first day of July, two thousand seven: Provided, That the party extended the renewal rights is in compliance with all material rights, duties and obligations arising under his, her or its contract and all relevant and applicable provisions of federal, state and local laws, rules, regulations, contracts or agreements at the time of renewal: Provided, however, That if and in the event the director makes an affirmative determination that further renewals beyond the time periods set forth in this subsection are in the best interest of the state and Stonewall Jackson Lake State Park, giving due consideration to financial, operational and other considerations deemed relevant and material by the director, that the director may authorize further renewals;
(D) That all rights and privileges arising under a lodging unit contract shall be transferred to the state or the state's designee upon the expiration or termination of the contract, upon the terms and conditions as each contract may provide or as may otherwise be agreed upon between the parties;

(E) That the state is not, and cannot be, obligated for any costs, expenses, fees or other charges associated with the development of the additional lodging units under this subsection or the operation and maintenance of the additional lodging units over time, including, but not limited to, costs associated with infrastructure improvements associated with development or operation of the additional lodging units. In his or her discretion, the director may engage professionals to assist the state in connection with its review and oversight of development of the additional lodging units;

(F) That at any time following the initial term and first renewal period of any lodging unit contract entered into with a private party with respect to an additional lodging unit that is constructed under this section, the state shall have the right and option, in its sole discretion, to purchase a lodging unit or lodging units in accordance with the provisions of this subsection and any and all contracts that may be entered into from time to time under this section;

(G) That at its sole option and discretion, the state may elect to purchase a lodging unit from a private party. In that event, the private party shall be paid the fair value of the private party's residual rights and privileges under the lodging unit contract, the residual rights and privileges to be valued generally in accordance with the valuation standards set forth in the National Park Service's standard contract provisions, or other relevant federal agency standards applicable to similar or like contract rights and provisions as may be in existence at the time of transfer, all as the same may be deemed relevant and appropriate by the director, and all in the exercise of the director's reasonable discretion.
Nothing in this section is intended or shall be construed to impose an obligation on the state to purchase, buy, buy out or otherwise acquire or pay for any lodging unit under this section, or to limit the right and ability of a private party to donate or contribute his, her or its interest in and to any lodging unit constructed under this section to the state or any charitable foundation that may be established and operating from time to time to support the continued operation and development of Stonewall Jackson Lake State Park;

(H) That the state shall have no obligation whatsoever to purchase, buy, buy out or otherwise acquire or pay for any lodging unit that is developed or constructed under this section; and

(I) The director shall have the right to review and approve the form and content of all contracts that may be entered into pursuant to this subsection in connection with the development, operation and maintenance of additional lodging units at Stonewall Jackson Lake State Park.

CHAPTER 156

(Com. Sub. for H.B. 4357 - By Delegates White, DeLong, Shook, Webster, Boggs, Kominar and Anderson)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §11-13J-8 and §11-13J-12 of the Code of West Virginia, 1931, as amended, relating to the Neighborhood Investment Program Act; increasing the total maximum aggregate tax credit amount and extending the termination date of the tax credit.
Be it enacted by the Legislature of West Virginia:

That §11-131-8 and §11-131-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-8. Total maximum aggregate tax credit amount.

(a) The amount of tax credits allowed under this article may not exceed two million five hundred thousand dollars in any state fiscal year.

(b) Applications for project certification shall be filed with the West Virginia development office. The West Virginia development office shall record the date each application is filed. All complete and valid applications shall be considered for approval or disapproval in a timely manner by the neighborhood assistance advisory board. The board may, in its discretion, consider applications for approval or disapproval at special or interim meetings for expedited processing.

(c) When the total amount of tax credits certified under this article equals the maximum amount of tax credits allowed, as specified in subsection (a) of this section, in any state fiscal year, no further certifications shall be issued in that same fiscal year. Upon approval of a project by the board, the director of the West Virginia development office shall certify the approved project unless certification is prohibited by the limitations and requirements set forth in this article.

(d) All applications filed in any state fiscal year and not certified during the state fiscal year in which they are filed shall be null and void by operation of law on the last day of the state fiscal year in which they are filed, and all applicants which elect to seek certification of a project plan shall file
27 anew on and after the first day of the succeeding state fiscal
28 year.

§11-13J-12. Program evaluation; expiration of credit;
preservation of entitlement.

1 Beginning on the fifteenth day of December, two
2 thousand five, and every second year thereafter, the director
3 shall secure an independent review of the neighborhood
4 investment program created by this article and present the
5 findings to the Joint Committee on Government and Finance.
6 Unless sooner terminated by law, the Neighborhood
7 Investment Program Act terminates on the first day of July,
8 two thousand eleven. There is no entitlement to the tax credit
9 under this article for a contribution made to a certified project
10 after the first day of July, two thousand eleven, and no credit
11 is available to any taxpayer for any contribution made after
12 that date. Taxpayers which have gained entitlement to the
13 credit pursuant to eligible contributions made to certified
14 projects prior to the first day of July, two thousand eleven,
15 shall retain that entitlement and apply the credit in due course
16 pursuant to the requirements and limitations of this article.

CHAPTER 157

(S.B. 775 - By Senators Fanning, Barnes, Bowman, Deem,
Facemyer, Green, McKenzie, Prezioso, Unger and White)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §20-1-19; and to
amend and reenact §20-1-20 of said code, all relating to the
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 §20-1-19; and that §20-1-20 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-19. West Virginia state parks and state forests.
§20-1-20. Limitations on state parks and state forests; exceptions.

§20-1-19. West Virginia state parks and state forests.

(a) The state parks of West Virginia are:


(b) The state forests of West Virginia are:
(1) Cabwaylingo; (2) Calvin Price; (3) Camp Creek; (4) Coopers Rock; (5) Greenbrier; (6) Kanawha; (7) Kumbrabow; (8) Panther Forest/WMA, consisting of approximately twenty-six acres containing park facilities; and (9) Seneca.

c) Neither the director nor any officer, employee or agent of the Division of Natural Resources may close, change the name or the designated use of a state park or state forest without statutory authorization.

§20-1-20. Limitations on state parks and state forests; exceptions.

(a)(1) The Legislature finds that the acquisition of land to construct new or expand existing state parks and state forests is costly. After these areas are constructed, they must be maintained and personnel must be employed to operate the facilities. These costs continue to increase and place a burden on state revenues.

(2) The Legislature declares that there is an ultimate limit to how many state parks and state forests, based upon its size, population and financial resources, the State of West Virginia can support. Further, the Legislature hereby declares that it is within its authority to establish, provide for and maintain limits on state parks and state forests.

(b) Without written notice to the Joint Committee on Government and Finance, neither the director nor an officer, employee or agent of the Division of Natural Resources may:

(1) Acquire, or authorize the acquisition of, land for any new state park or state forest; or

(2) Construct, or authorize the construction of, any new facility or building in any state park or state forest.
(c) Notice to the Joint Committee on Government and Finance is not required for the following acquisitions and construction projects:

(1) The director may authorize the construction of any new facility or building that is constructed with donated funds, materials and labor in an existing state park or state forest; and

(2) The director may construct or authorize the construction of any new facility or building built by state employees when the total cost of materials does not exceed twenty-five thousand dollars.

(d) Nothing in this section shall prohibit the director from expending any appropriations that are designated to complete land acquisitions or the construction of facilities and buildings, including electric, water and sewage systems for state parks and state forests.

(e) The director shall require that any new building has a roof of sufficient slope in accordance with the current state building code.

CHAPTER 158

(Com. Sub. for H.B. 4355 - By Delegates Browning, Moore, Ellis, Kominar, White and Burdiss)

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §20-14-8 of the Code of West Virginia, 1931, as amended, relating to allowing the Hatfield-McCoy Regional Recreation Authority to retain civil penalties
imposed for violation of authority rules, for the benefit of the Hatfield-McCoy Recreation Area.

Be it enacted by the Legislature of West Virginia:

That §20-14-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-8. Violation of rules, criminal and civil penalties; use of funds.

(a) Any person who violates any of the rules promulgated by the board pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars for each offense.

(b) Any person who violates any of the rules promulgated by the board pursuant of this article relating to permits or failure to purchase a permit, safety violations or other civil violations is subject to a civil penalty of one hundred dollars. Authority rangers shall issue citations for civil violations.

(c) All civil penalties for civil violations received pursuant to this section shall be remitted to the Hatfield-McCoy Regional Recreation Authority for use by the board in its discretion for the benefit of the Hatfield-McCoy Recreation Area. Effective July 1, 2008, the special revenue fund known as the Hatfield-McCoy Recreation Fund shall be terminated, and any and all funds remaining in the fund shall be transferred from the fund and remitted to the Hatfield-McCoy Regional Recreation Authority for use by the Board in its discretion for the benefit of the Hatfield-McCoy Recreation Area.
CHAPTER 159

(Com. Sub. for H.B. 4129 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-18; to amend and reenact §30-3-10a of said code; to amend said code by adding thereto a new section, designated §30-3-16a; to amend said code by adding thereto two new sections, designated §30-4-8a and §30-4-10a; to amend said code by adding thereto a new section, designated §30-5-10a; to amend said code by adding thereto a new section, designated §30-7-6a; to amend said code by adding thereto a new section, designated §30-8-5a; to amend said code by adding thereto a new section, designated §30-14A-5; to amend said code by adding thereto a new section, designated §30-20-8a; to amend said code by adding thereto a new section, designated §30-21-17; and to amend said code by adding thereto a new section, designated §30-28-8a, all relating to the establishment of special, retired, volunteer and inactive licenses for certain professions and occupations; special volunteer medical license; exception as to terminated policy with “tail insurance”; no extended coverage for certain circumstances; providing legislative rule-making authority to the respective boards to set licensure criteria and continuing education; providing for special volunteer licenses for certain health care providers providing volunteer services; waiving certain licensing fees; and providing civil immunity for special volunteer licenses for certain health care providers.
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 §30-1-18; that §30-3-10a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-3-16a; that said code be amended by adding thereto a new section, designated §30-4-8a and §30-4-10a; that said code be amended by adding thereto a new section, designated §30-5-10a; that said code be amended by adding thereto a new section, designated §30-7-6a; that said code be amended by adding thereto a new section, designated §30-8-5a; that said code be amended by adding thereto a new section, designated §30-14A-5; that said code be amended by adding thereto a new section, designated §30-20-8a; that said code be amended by adding thereto a new section, designated §30-21-17; and that said code be amended by adding thereto a new section, designated §30-28-8a, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article
5. Pharmacists, Pharmacy Technicians, Pharmacy Interns and Pharmacies.
6. Registered Professional Nurses.
7. Optometrists.
14A. Assistants to Osteopathic Physicians and Surgeons.
20. Physical Therapists.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO STATE BOARDS.

§30-1-18. Retired, volunteer and inactive status licenses.

1 (a) Every board referred to in this chapter may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code,
to establish licensure criteria and continuing education requirements for retired, volunteer and inactive licenses.

(b) If a board which establishes licensure criteria as authorized in this section does not establish specific continuing education requirements, the retired, volunteer or inactive licensees shall comply with the same continuing education requirements as established by the respective boards for an active license.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

§30-3-16. Special volunteer physician assistant license; civil immunity for voluntary services rendered to indigents.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of medicine who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer medical license shall be issued by the West Virginia Board of Medicine to physicians licensed or otherwise eligible for licensure under this article and the rules promulgated hereunder without the payment of any application fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually. The board shall develop application forms for the special license provided for in this subsection which shall contain the physician’s acknowledgment that:

(1) The physician's practice under the special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in West Virginia; (2) the physician will not receive any payment or
compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer medical license; (3) the physician will supply any supporting documentation that the board may reasonably require; and (4) the physician agrees to continue to participate in continuing medical education as required of physicians in active practice.

(b) Any physician who renders any medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer medical license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician and the clinic pursuant to which the physician will provide voluntary noncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician at the clinic: Provided, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge shall not be relieved from imputed liability for the negligent acts of a physician rendering voluntary medical services at or for the clinic under a special volunteer medical license authorized under subsection (a) of this section.

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for
licensure as listed in section ten of this article and in the legislative rules promulgated hereunder, except the fee requirements of subsections (b) and (d) of said section and of the legislative rule promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer medical license to any physician whose medical license is or has been subject to any disciplinary action or to any physician who has surrendered a medical license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her medical license, or who has elected to place a medical license in inactive status in lieu of having a complaint initiated or other action taken against his or her medical license, or who have been denied a medical license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician who holds a special volunteer medical license: Provided, That this subsection shall not apply to a terminated policy, terminated contract of liability insurance or extended reporting endorsement attached thereto that provides "tail insurance" as defined by section two, article twenty-d, chapter thirty-three of this code: Provided, however, That nothing within this subsection shall be construed to extend coverage under a terminated policy or terminated contract of liability insurance or any extended reporting endorsement attached thereto: (1) Alter or amend the effective policy period of
any policy, contract of liability insurance or extended reporting endorsement; or (2) cover the treatment of indigent and needy patients by a physician who holds a special volunteer medical license.

§30-3-16a. Special volunteer physician assistant license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer physician assistant license for physician assistants retired or retiring from the active practice of medicine who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer physician assistant license shall be issued by the West Virginia Board of Medicine to physician assistants licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the physician assistant’s acknowledgment that:

(1) The physician assistant’s practice under the special volunteer physician assistant license will be exclusively devoted to providing medical care to needy and indigent persons in West Virginia;

(2) The physician assistant will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer physician assistant license;
The physician assistant will supply any supporting documentation that the board may reasonably require; and

The physician assistant agrees to continue to participate in continuing education as required by the board for the special volunteer physician assistant license.

Any physician assistant who renders any medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer physician assistant license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation, is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician assistant’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician assistant and the clinic pursuant to which the physician assistant will provide voluntary uncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician assistant at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a physician assistant rendering voluntary medical services at or for the clinic under a special volunteer physician assistant license authorized under subsection (a) of this section.

For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for
licensure as listed in section sixteen of this article and in the legislative rules promulgated thereunder, except the fee requirements of subsection (n) of that section and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer physician assistant license to any physician assistant whose license is or has been subject to any disciplinary action or to any physician assistant who has surrendered a physician assistant license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a physician assistant license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a physician assistant license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician assistant covered under the provisions of this article, shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician assistant who holds a special volunteer physician assistant license.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-8a. Special volunteer dental license; civil immunity for voluntary services rendered to indigents.

§30-4-10a. Special volunteer dental hygienist license; civil immunity for voluntary services rendered to indigents.

§30-4-8a. Special volunteer dental license; civil immunity for voluntary services rendered to indigents.
(a) There is established a special volunteer dental license for dentists retired or retiring from the active practice of dentistry who wish to donate their expertise for the dental care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer dental license shall be issued by the West Virginia Board of Dental Examiners to dentists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of a application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the dentist’s acknowledgment that:

(1) The dentist’s practice under the special volunteer dental license will be exclusively devoted to providing dental care to needy and indigent persons in West Virginia;

(2) The dentist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any dental services rendered under the special volunteer dental license;

(3) The dentist will supply any supporting documentation that the board may reasonably require; and

(4) The dentist agrees to continue to participate in continuing dental education as required by the board for a special volunteer dental license.

(b) Any dentist who renders any dental service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer dental license authorized under
subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the dental service at the clinic unless the act or omission was the result of the dentist’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the dentist and the clinic pursuant to which the dentist will provide voluntary uncompensated dental services under the control of the clinic to patients of the clinic before the rendering of any services by the dentist at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a dentist rendering voluntary dental services at or for the clinic under a special volunteer dental license authorized under subsection (a) of this section.

(d) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section eight of this article and in the legislative rules promulgated thereunder, except the fee requirements of subdivision six of that section and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer dental license to any dentist whose dental license is or has been subject to any disciplinary action or to any dentist who has surrendered a dental license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or
other action taken against his or her dental license, or who
has elected to place a dental license in inactive status in lieu
of having a complaint initiated or other action taken against
his or her dental license, or who has been denied a dental
license.

(f) Any policy or contract of liability insurance providing
coverage for liability sold, issued or delivered in this state to
any dentist covered under the provisions of this article shall
be read so as to contain a provision or endorsement whereby
the company issuing such policy waives or agrees not to
assert as a defense on behalf of the policyholder or any
beneficiary thereof, to any claim covered by the terms of
such policy within the policy limits, the immunity from
liability of the insured by reason of the care and treatment of
needy and indigent patients by a dentist who holds a special
volunteer dental license.

§30-4-10a. Special volunteer dental hygienist license; civil
immunity for voluntary services rendered to
indigents.

(a) There is established a special volunteer dental
hygienist license for dental hygienists retired or retiring from
the active practice of dental hygiene who wish to donate their
expertise for the care and treatment of indigent and needy
patients in the clinic setting of clinics organized, in whole or
in part, for the delivery of health care services without
charge. The special volunteer dental hygienist license shall
be issued by the West Virginia Board of Dental Examiners to
dental hygienists licensed or otherwise eligible for licensure
under this article and the legislative rules promulgated
hereunder without the payment of an application fee, license
fee or renewal fee, shall be issued for the remainder of the
licensing period, and renewed consistent with the boards
other licensing requirements. The board shall develop
application forms for the special license provided in this
subsection which shall contain the dental hygienist’s acknowledgment that:

(1) The dental hygienist’s practice under the special volunteer dental hygienist license will be exclusively devoted to providing dental hygiene care to needy and indigent persons in West Virginia;

(2) The dental hygienist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any dental hygiene services rendered under the special volunteer dental hygienist license;

(3) The dental hygienist will supply any supporting documentation that the board may reasonably require; and

(4) The dental hygienist agrees to continue to participate in continuing professional education as required by the board for the special volunteer dental hygienist.

(b) Any dental hygienist who renders any dental hygiene service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer dental hygienist license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the dental hygiene service at the clinic unless the act or omission was the result of the dental hygienist’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the dental hygienist and the clinic pursuant to which the dental hygienist will provide voluntary uncompensated dental hygiene services under the control of the clinic to patients of the clinic before the rendering of any services by the dental hygienist at the clinic: Provided, That
any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a dental hygienist rendering voluntary dental hygiene services at or for the clinic under a special volunteer dental hygienist license authorized under subsection (a) of this section.

(d) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules promulgated thereunder, except the fee requirements of subdivision (6) of that section and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer dental hygienist license to any dental hygienist whose license is or has been subject to any disciplinary action or to any dental hygienist who has surrendered a license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her dental hygienist license, or who has elected to place a dental hygienist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a dental hygienist license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any dental hygienist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered
83 by the terms of such policy within the policy limits, the
84 immunity from liability of the insured by reason of the care
85 and treatment of needy and indigent patients by a dental
86 hygienist who holds a special volunteer dental hygienist
87 license.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.

§30-5-10a. Special volunteer pharmacist license; civil immunity
for voluntary services rendered to indigents.

1 (a) There is established a special volunteer pharmacist
2 license for pharmacists retired or retiring from the active
3 practice of pharmaceutical care who wish to donate their
4 expertise for the pharmaceutical care and treatment of
5 indigent and needy patients in the clinic setting of clinics
6 organized, in whole or in part, for the delivery of health care
7 services without charge. The special volunteer pharmacist
8 license shall be issued by the West Virginia Board of
9 Pharmacy to pharmacists licensed or otherwise eligible for
10 licensure under this article and the legislative rules
11 promulgated hereunder without the payment of an application
12 fee, license fee or renewal fee, and the initial license shall be
13 issued for the remainder of the licensing period, and renewed
14 consistent with the boards other licensing requirements. The
15 board shall develop application forms for the special license
16 provided in this subsection which shall contain the
17 pharmacist’s acknowledgment that:

18 (1) The pharmacist’s practice under the special volunteer
19 pharmacist license will be exclusively devoted to providing
20 pharmaceutical care to needy and indigent persons in West
21 Virginia;

22 (2) The pharmacist will not receive any payment or
23 compensation, either direct or indirect, or have the
expectation of any payment or compensation, for any
pharmaceutical services rendered under the special volunteer
pharmacist license;

(3) The pharmacist will supply any supporting
documentation that the board may reasonably require; and

(4) The pharmacist agrees to continue to participate in
continuing professional education as required by the board
for the special volunteer pharmacist license.

(b) Any pharmacist who renders any pharmaceutical
service to indigent and needy patients of a clinic organized,
in whole or in part, for the delivery of health care services
without charge under a special volunteer pharmacist license
authorized under subsection (a) of this section without
payment or compensation or the expectation or promise of
payment or compensation is immune from liability for any
civil action arising out of any act or omission resulting from
the rendering of the pharmaceutical service at the clinic
unless the act or omission was the result of the pharmacist’s
gross negligence or willful misconduct. In order for the
immunity under this subsection to apply, there must be a
written agreement between the pharmacist and the clinic
pursuant to which the pharmacist will provide voluntary
uncompensated pharmaceutical services under the control of
the clinic to patients of the clinic before the rendering of any
services by the pharmacist at the clinic: Provided, That any
clinic entering into such written agreement is required to
maintain liability coverage of not less than one million
dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of
this section, a clinic organized, in whole or in part, for the
delivery of health care services without charge is not relieved
from imputed liability for the negligent acts of a pharmacist
rendering voluntary pharmaceutical services at or for the
57 clinic under a special volunteer pharmacist license authorized
58 under subsection (a) of this section.
59
(d) For purposes of this section, “otherwise eligible for
60 licensure” means the satisfaction of all the requirements for
61 licensure as listed in section five of this article and in the
62 legislative rules promulgated thereunder, except the fee
63 requirements of subsection (b) of that section and of the
64 legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring
66 the board to issue a special volunteer pharmacist license to
67 any pharmacist whose license is or has been subject to any
68 disciplinary action or to any pharmacist who has surrendered
69 a license or caused such license to lapse, expire and become
70 invalid in lieu of having a complaint initiated or other action
71 taken against his or her license, or who has elected to place
72 a pharmacist license in inactive status in lieu of having a
73 complaint initiated or other action taken against his or her
74 license, or who has been denied a pharmacist license.

(f) Any policy or contract of liability insurance providing
76 coverage for liability sold, issued or delivered in this state to
77 any pharmacist covered under the provisions of this article
78 shall be read so as to contain a provision or endorsement
79 whereby the company issuing such policy waives or agrees
80 not to assert as a defense on behalf of the policyholder or any
81 beneficiary thereof, to any claim covered by the terms of
82 such policy within the policy limits, the immunity from
83 liability of the insured by reason of the care and treatment of
84 needy and indigent patients by a pharmacist who holds a
85 special volunteer pharmacist license.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-6a. Special volunteer registered professional nurse
 license; civil immunity for voluntary services
 rendered to indigents.
(a) There is established a special volunteer license for registered professional nurses retired or retiring from the active practice of nursing who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer registered professional nurse license shall be issued by the West Virginia Board of Examiners for registered professional nurses to registered professional nurses licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the registered professional nurse’s acknowledgment that:

1. The registered professional nurse’s practice under the special volunteer registered professional nurse license will be exclusively devoted to providing nursing care to needy and indigent persons in West Virginia;

2. The registered professional nurse will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any nursing services rendered under the special volunteer registered professional nurse license;

3. The registered professional nurse will supply any supporting documentation that the board may reasonably require; and

4. The registered professional nurse agrees to continue to participate in continuing education as required by the board for the special volunteer registered professional nurse license.
(b) Any registered professional nurse who renders nursing service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer registered professional nurse license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the nursing service at the clinic unless the act or omission was the result of the registered professional nurse’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the registered professional nurse and the clinic pursuant to which the registered professional nurse will provide voluntary uncompensated nursing services under the control of the clinic to patients of the clinic before the rendering of any services by the registered professional nurse at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a registered professional nurse rendering voluntary nursing services at or for the clinic under a special volunteer registered professional nurse license authorized under subsection (a) of this section.

(d) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section six of this article and in the legislative rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.
(e) Nothing in this section may be construed as requiring the board to issue a special volunteer registered professional nurse license to any registered professional nurse whose license is or has been subject to any disciplinary action or to any registered professional nurse who has surrendered his or her license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a registered professional nurse license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a registered professional nurse license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any registered professional nurse covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a registered professional nurse who holds a special volunteer registered professional nurse license.

ARTICLE 8. OPTOMETRISTS.

§30-8-5a. Special volunteer certificate of registration; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer certificate of registration for optometrists retired or retiring from the active practice of optometry who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special
volunteer certificate of registration shall be issued by the West Virginia Board of Optometry to optometrists registered or otherwise eligible for registration under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and shall be issued for the remainder of the licensing period, and renewed consistent with the board's other licensing requirements. The board shall develop application forms for the special certificate of registration provided in this subsection which shall contain the optometrist’s acknowledgment that:

(1) The optometrist’s practice under the special volunteer certificate of registration will be exclusively devoted to providing optometrical care to needy and indigent persons in West Virginia;

(2) The optometrist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any optometrical services rendered under the special volunteer certificate of registration;

(3) The optometrist will supply any supporting documentation that the board may reasonably require; and

(4) The optometrist agrees to continue to participate in continuing education as required by the board for a special volunteer optometrist license.

(b) Any optometrist who renders any optometrical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer certificate of registration authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the optometrical service at the clinic unless
the act or omission was the result of the optometrist’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the optometrist and the clinic pursuant to which the optometrist will provide voluntary uncompensated optometrical services under the control of the clinic to patients of the clinic before the rendering of any services by the optometrist at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an optometrist rendering voluntary optometrical services at or for the clinic under a special volunteer certificate of registration authorized under subsection (a) of this section.

(d) For purposes of this section, “otherwise eligible for registration” means the satisfaction of all the requirements for registration as listed in section five of this article and in the legislative rules promulgated thereunder, except the fee requirements of section seven of this article and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer certificate of registration to any optometrist whose certificate of registration is or has been subject to any disciplinary action or to any optometrist who has surrendered a certificate of registration or caused such registration to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her registration, or who has elected to place a certificate of registration in inactive status in lieu of having a complaint initiated or other action taken.
against his or her registration, or who has been denied a
certificate of registration.

(f) Any policy or contract of liability insurance providing
coverage for liability sold, issued or delivered in this state to
any optometrist covered under the provisions of this article
shall be read so as to contain a provision or endorsement
whereby the company issuing such policy waives or agrees
not to assert as a defense on behalf of the policyholder or any
beneficiary thereof, to any claim covered by the terms of
such policy within the policy limits, the immunity from
liability of the insured by reason of the care and treatment of
needy and indigent patients by an optometrist who holds a
special volunteer certificate of registration.

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS
AND SURGEONS.

§30-14A-5. Special volunteer osteopathic physician assistant
certification; civil immunity for voluntary
services rendered to indigents.

(a) There is established a special volunteer osteopathic
physician assistant certificate for osteopathic physician
assistants retired or retiring from the active practice of
osteopathy who wish to donate their expertise for the medical
care and treatment of indigent and needy patients in the clinic
setting of clinics organized, in whole or in part, for the
delivery of health care services without charge. The special
volunteer osteopathic physician assistant certificate shall be
issued by the West Virginia Board of Osteopathy to
osteopathic physician assistants certified or otherwise eligible
for certification under this article and the legislative rules
promulgated hereunder without the payment of an application
fee, license fee or renewal fee, shall be issued for and the
remainder of the licensing period, and renewed consistent
with the boards other licensing requirements. The board shall
develop application forms for the special certificate provided
in this subsection which shall contain the osteopathic physician assistant’s acknowledgment that:

(1) The osteopathic physician assistant’s practice under the special volunteer osteopathic physician assistant certificate will be exclusively devoted to providing osteopathic care to needy and indigent persons in West Virginia;

(2) The osteopathic physician assistant will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any osteopathic services rendered under the special volunteer osteopathic physician assistant certificate;

(3) The osteopathic physician assistant will supply any supporting documentation that the board may reasonably require; and

(4) The osteopathic physician assistant agrees to continue to participate in continuing education as required by the board for a special volunteer osteopathic physician assistant license.

(b) Any osteopathic physician assistant who renders any osteopathic service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer osteopathic physician assistant certificate authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation, is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the osteopathic service at the clinic unless the act or omission was the result of the osteopathic physician assistant’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the osteopathic physician assistant and
the clinic pursuant to which the osteopathic physician assistant will provide voluntary uncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the osteopathic physician assistant at the clinic: *Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.*

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an osteopathic physician assistant rendering voluntary medical services at or for the clinic under a special volunteer osteopathic physician assistant certificate authorized under subsection (a) of this section.

(d) For purposes of this section, “otherwise eligible for certification” means the satisfaction of all the requirements for certification as listed in section one of this article and in the legislative rules promulgated thereunder. The term does not include the fee requirement of section three of this article or of legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer osteopathic physician assistant certificate to any osteopathic physician assistant whose certificate is or has been subject to any disciplinary action or to any osteopathic physician assistant who has surrendered an osteopathic physician assistant certificate or caused such certificate to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her certificate, or who has elected to place an osteopathic physician assistant certificate in inactive status in lieu of having a complaint initiated or other action taken
against his or her certificate, or who has been denied an osteopathic physician assistant certificate.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any osteopathic physician assistant covered under the provisions of this article, shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an osteopathic physician assistant who holds a special volunteer osteopathic physician assistant certificate.

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-8a. Special volunteer physical therapist license, physical therapist assistant license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for physical therapists or physical therapy assistants, as the case may be, retired or retiring from active practice who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer license provided by this section shall be issued by the West Virginia Board of Physical Therapy to physical therapists or physical therapist assistants licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in
this subsection which shall contain the applicant’s
acknowledgment that:

(1) The applicant’s practice under the special volunteer
license will be exclusively devoted to providing physical
therapy care to needy and indigent persons in West Virginia;

(2) The applicant will not receive any payment or
compensation, either direct or indirect, or have the
expectation of any payment or compensation, for any
physical therapy services rendered under the special
volunteer license;

(3) The applicant will supply any supporting
documentation that the board may reasonably require; and

(4) The applicant agrees to continue to participate in
continuing education as required of by the board for a special
volunteer physical therapists or physical therapist assistants
license, as the case may be.

(b) Any physical therapist or physical therapist assistant
who renders any physical therapy service to indigent and
needy patients of a clinic organized, in whole or in part, for
the delivery of health care services without charge under a
special volunteer license authorized under subsection (a) of
this section without payment or compensation or the
expectation or promise of payment or compensation is
immune from liability for any civil action arising out of any
act or omission resulting from the rendering of the physical
therapy service at the clinic unless the act or omission was
the result of gross negligence or willful misconduct on the
part of the physical therapist or physical therapist assistant.
In order for the immunity under this subsection to apply,
there must be a written agreement between the physical
therapist or physical therapist assistant and the clinic pursuant
to which the physical therapist or physical therapist assistant
will provide voluntary uncompensated physical therapy
services under the control of the clinic to patients of the clinic
before the rendering of any services by the physical therapist
or physical therapist assistant at the clinic: Provided, That
any clinic entering into such written agreement is required to
maintain liability coverage of not less than one million
dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of
this section, a clinic organized, in whole or in part, for the
delivery of health care services without charge is not relieved
from imputed liability for the negligent acts of a physical
therapist or physical therapist assistant rendering voluntary
physical therapy services at or for the clinic under a special
volunteer license authorized under subsection (a) of this
section.

(d) For purposes of this section, “otherwise eligible for
licensure” means the satisfaction of all the requirements for
licensure for a physical therapist or physical therapist
assistant, as the case may be, as listed in section six of this
article and in the legislative rules promulgated thereunder,
except the fee requirements of subsection (e) of that section
and of the legislative rules promulgated by the board relating
to fees.

(e) Nothing in this section may be construed as requiring
the board to issue a special volunteer license to any physical
therapist or physical therapist assistant whose license is or
has been subject to any disciplinary action or to any physical
therapist or physical therapist assistant who has surrendered
a license or caused such license to lapse, expire and become
invalid in lieu of having a complaint initiated or other action
taken against his or her license, or who has elected to place
a license in inactive status in lieu of having a complaint
initiated or other action taken against his or her license, or
who has been denied a license.
(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physical therapist or physical therapist assistant covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physical therapist or physical therapist assistant who holds a special volunteer license.

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-17. Special volunteer psychologists license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer psychologists license for psychologists retired or retiring from the active practice of psychology who wish to donate their expertise for the psychological care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer psychologist license shall be issued by the West Virginia Board of Examiners of Psychologists to psychologists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the psychologist’s acknowledgment that:
(1) The psychologist’s practice under the special volunteer psychologists license will be exclusively devoted to providing psychological care to needy and indigent persons in West Virginia;

(2) The psychologist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any psychological services rendered under the special volunteer psychological license;

(3) The psychologist will supply any supporting documentation that the board may reasonably require; and

(4) The psychologist agrees to continue to participate in continuing education as required by the board for a special volunteer psychologists license.

(b) Any psychologist who renders any psychological service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer psychologist license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation, is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the psychological service at the clinic unless the act or omission was the result of the psychologist’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the psychologist and the clinic pursuant to which the psychologist will provide voluntary uncompensated psychological services under the control of the clinic to patients of the clinic before the rendering of any services by the psychologists at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.
(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a psychologist rendering voluntary psychological services at or for the clinic under a special volunteer psychological license authorized under subsection (a) of this section.

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section seven of this article and in the legislative rules promulgated thereunder, except the fee requirements of subsection (d) of that section and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer psychologist license to any psychologist whose license is or has been subject to any disciplinary action or to any psychologist who has surrendered a psychologist license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a psychologist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a psychologist license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any psychologist covered under the provisions of this article, shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a psychologist who holds a special volunteer psychologist license.
ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

§30-28-8a. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer occupational therapist license for occupational therapists retired or retiring from the active practice of occupational therapy who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer occupational therapist license shall be issued by the West Virginia Board of Occupational Therapy to occupational therapists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the occupational therapist’s acknowledgment that:

(1) The occupational therapist’s practice under the special volunteer occupational therapist license will be exclusively devoted to providing occupational therapy care to needy and indigent persons in West Virginia;

(2) The occupational therapist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any occupational therapy services rendered under the special volunteer occupational therapist license;
(3) The occupational therapist will supply any supporting documentation that the board may reasonably require; and

(4) The occupational therapist agrees to continue to participate in continuing education as required by the board for a special volunteer occupational therapists license.

(b) Any occupational therapist who renders any occupational therapy service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer occupational therapist license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the occupational therapy service at the clinic unless the act or omission was the result of the occupational therapist’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the occupational therapist and the clinic pursuant to which the occupational therapist will provide voluntary uncompensated occupational therapy services under the control of the clinic to patients of the clinic before the rendering of any services by the occupational therapist at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an occupational therapist rendering voluntary occupational therapy services at or for the clinic under a special volunteer occupational therapist license authorized under subsection (a) of this section.
(d) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section eight of this article and in the legislative rules promulgated thereunder, excepting the fee requirements of subsection (a), section eleven of this article and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer occupational therapist license to any occupational therapist whose occupational therapist license is or has been subject to any disciplinary action or to any occupational therapist who has surrendered an occupational therapist license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her occupational therapist license, or who has elected to place an occupational therapist license in inactive status in lieu of having a complaint initiated or other action taken against his or her occupational therapist license, or who has been denied an occupational therapist license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any occupational therapist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an occupational therapist who holds a special volunteer occupational therapist license.
AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating to licenses to practice medicine and surgery or podiatry; clarifying the licensing provisions; removing the reciprocity provision; authorizing ten years for an applicant to pass the licensing examination; requiring an applicant who fails the licensing examination three times to appear before the board; establishing the requirements for a restricted license in extraordinary circumstances; and authorizing rule-making authority for a restricted license.

Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.
(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

1. He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

2. He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;

3. He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the Accreditation Council for Graduate Medical Education; and

4. He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the board, or a majority of it, may accept in lieu of an examination of applicants the certificate of the National Board of Medical Examiners: Provided, however, That an applicant is required to attain a passing score on all components or steps of the examination within a period of ten consecutive years: Provided further, That an applicant who has failed to successfully complete and pass any one of the three steps of the United States medical licensing examination (USMLE) in three attempts is required to appear
before the board for a determination by the board, in its
discretion, as to what, if any, further education, evaluation
and training is required for further consideration of licensure.
The board need not reject a candidate for a nonmaterial
technical or administrative error or omission in the
application process that is unrelated to the candidate’s
professional qualifications as long as there is sufficient
information available to the board to determine the eligibility
of the candidate for licensure.

(c) In addition to the requirements of subsection (b) of
this section, any individual who has received the degree of
doctor of medicine or its equivalent from a school of
medicine located outside of the United States, the
Commonwealth of Puerto Rico and Canada to be licensed to
practice medicine in this state must also meet the following
additional requirements and limitations:

(1) He or she must be able to demonstrate to the
satisfaction of the board his or her ability to communicate in
the English language;

(2) Before taking a licensure examination, he or she must
have fulfilled the requirements of the Educational
Commission for Foreign Medical Graduates for certification
or he or she must provide evidence of receipt of a passing
score on the examination of the Educational Commission for
Foreign Medical Graduates: Provided, That an applicant
who: (i) Is currently fully licensed, excluding any temporary,
conditional or restricted license or permit, under the laws of
another state, the District of Columbia, Canada or the
Commonwealth of Puerto Rico; (ii) has been engaged on a
full-time professional basis in the practice of medicine within
the state or jurisdiction where the applicant is fully licensed
for a period of at least five years; and (iii) is not the subject
of any pending disciplinary action by a medical licensing
board and has not been the subject of professional discipline
by a medical licensing board in any jurisdiction is not required to have a certificate from the Educational Commission for Foreign Medical Graduates;

(3) He or she must submit evidence to the board of either:
(i) Having successfully completed a minimum of two years of graduate clinical training in a program approved by the Accreditation Council for Graduate Medical Education; or
(ii) current certification by a member board of the American Board of Medical Specialties.

(d) For an individual to be licensed to practice podiatry in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine which is approved by the Council of Podiatry Education or by the board;

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score: Provided, That an applicant is required to attain a passing score on all components or steps of the examination within a
provided, however, that an applicant who has failed to successfully complete and pass any one of the three steps of the National Board of Podiatric Medical Examiners examination in three attempts shall be required to appear before the board for a determination by the board, in its discretion, as to what, if any, further education, evaluation and/or training is required for further consideration of licensure; and

(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or three years’ private podiatric clinical experience in lieu of this requirement.

(e) Notwithstanding any of the provisions of this article, the board may issue a restricted license to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant’s exceptional education, training and practice credentials, the applicant’s practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant’s education, training and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) Upon a finding by the board that the applicant received his or her post-graduate medical training outside of the United States and its territories;
(4) That the restricted license issued under extraordinary circumstances is approved by a vote of three fourths of the members of the board;

(5) That orders denying applications for a restricted license under this subsection are not appealable; and

(6) That the board report to the President of the Senate and the Speaker of the House of Delegates all decisions made pursuant to this subsection and the reasons for those decisions.

(f) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, that establish and regulate the restricted license issued to an applicant in extraordinary circumstances pursuant to the provisions of this section.

(g) All licenses to practice medicine and surgery granted prior to the first day of July, two thousand eight, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section do not apply to any person legally entitled to practice chiropody or podiatry in this state prior to the eleventh day of June, one thousand nine hundred sixty-five: Provided, however, That all persons licensed to practice chiropody prior to the eleventh day of June, one thousand nine hundred sixty-five, shall be permitted to use the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

(h) The board may not issue a license to a person not previously licensed in West Virginia whose license has been revoked or suspended in another state until reinstatement of his or her license in that state.
AN ACT to amend and reenact §30-3-16 of the Code of West Virginia, 1931, as amended, relating to physician assistants; updating language to conform to national changes; requiring supervising physicians to be fully licensed without restriction or limitation; permitting graduates of an approved program who have passed the national certifying examination for physician assistants to obtain temporary licenses; requiring a physician assistant who fails a recertifying examination to immediately notify the supervising physician and the Board of Medicine and immediately cease practice and requiring automatic license expiration until passage of the examination; raising fees and adding fees for temporary license and prescriptive writing privileges.

Be it enacted by the Legislature of West Virginia:

That §30-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. 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.

(a) As used in this section:

(1) "Approved program" means an educational program for physician assistants approved and accredited by the Committee on Accreditation of Allied Health Education Programs 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 and fully licensed in this state without restriction or limitation 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 supervising physician. The supervising physician may send the physician assistant off the premises to perform duties 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 (r) 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 supervising physician(s) 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 (c) 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 a graduate of an approved program who has successfully passed the national commission on certification of physician assistants' certifying examination submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, and a fifty dollar temporary license fee, and the application is complete, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant.

(h) When a graduate of an approved program submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, and a fifty dollar temporary license fee, and the application is complete, 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.

(i) No applicant may receive a temporary license who, following graduation from an approved program, has sat for and not obtained a passing score on the examination.

(j) A physician assistant who has not been certified by the national commission on certification of physician assistants
will be restricted to work under the direct supervision of the supervising physician.

(k) 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.

(l) In the event that a physician assistant fails a recertification examination of the National Commission on Certification of Physician Assistants and is no longer certified, the physician assistant shall immediately notify his or her supervising physician or physicians and the board in writing. The physician assistant shall immediately cease practicing, the license shall expire and terminate automatically, and the physician assistant is not eligible for reinstatement until he or she has obtained a passing score on the examination.

(m) 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 twenty-nine-a of this code and as set forth in rules duly adopted by the board.
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.

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.

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.

(q) 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.

(r) 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. A fee of fifty dollars will be charged for prescription writing privileges. 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.

(s) 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.

(t) 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 (r) 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.
(u) 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.

(v) Each application for licensure submitted by a licensed supervising physician under this section is to be accompanied by a fee of two hundred dollars. A fee of one hundred dollars is to be charged for the biennial renewal of the license. A fee of fifty dollars is to be charged for any change or addition of supervising physician, or change or addition of job location. A fee of fifty dollars will be charged for prescriptive writing privileges.

(w) 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.

(x) Notwithstanding any provision of this chapter to the contrary, 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.

(y) 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.

(z) 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.

(aa) 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 a state correctional facility for not less than one nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

(bb) 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.
AN ACT to amend and reenact §30-4-3, §30-4-5, §30-4-6, §30-4-13, §30-4-14, §30-4-15 and §30-4-21 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Dental Practice Act; clarifying definitions, powers of the board, rulemaking and temporary permits; authorizing Board of Dental Examiners to promulgate rules allowing dental hygienists to practice in public health settings under different degrees of supervision; providing method of service that a copy of a complaint against a dentist or dental hygienist to a dentist or dental hygienist be established by board rule; establishing a special volunteer dental license; and providing civil immunity.

Be it enacted by the Legislature of West Virginia:

That §30-4-3, §30-4-5, §30-4-6, §30-4-13, §30-4-14, §30-4-15 and §30-4-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-3. Definitions.
§30-4-5. Powers of the board.
§30-4-6. Rule-making authority.
§30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.
§30-4-14. Temporary permits; teaching permit; dental hygienist.
§30-4-15. Scope of practice; dentist.
§30-4-21. Complaints; investigations.
§30-4-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) “Approved dental hygiene program” means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association.

(2) “Approved dental school, college or dental department of a university” means a dental school, college or dental department of a university that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association.

(3) “Authorize” means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist’s diagnosis and treatment plan.

(4) “Board” means the West Virginia Board of Dental Examiners.

(5) “Certificate of qualification” means a certificate authorizing a dentist to practice a specialty.

(6) “Delegated procedures” means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the supervision of a licensed dentist.

(7) “Dental assistant” means a person qualified by education, training and experience who aids or assists a
dentist in the delivery of patient care in accordance with delegated procedures or who may perform nonclinical duties in the dental office: Provided, That no occupational title other than dental assistant shall be used to describe this auxiliary.

(8) “Dental auxiliary personnel” or “auxiliary” means dental hygienists and dental assistants who assist the dentist in the provision of oral health care services to patients.

(9) “Dental hygienist” means a person licensed by the board who provides preventative oral health care services to patients in the dental office and in a public health setting: Provided, That no occupational title other than dental hygienist may be used to describe this auxiliary.

(10) “Dental laboratory” means a dental laboratory as defined in section one, article four-b of this chapter.

(11) “Dental office” means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry.

(12) “Dental prosthesis” means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics.

(13) “Dentist” means an individual licensed by the board to practice dentistry.

(14) “Dentistry” means the evaluation, diagnosis, prevention and treatment of diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures provided by a dentist.

(15) “Direct supervision” means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed.
(16) “General supervision” means a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedures and will evaluate the treatment provided by the dental auxiliary personnel.

(17) “Good moral character” means a lack of history of dishonesty.

(18) “License” means a license to practice dentistry or dental hygiene.

(19) “Licensee” means a person holding a license.

(20) “Public health practice” means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the Board of Dental Examiners to require direct, general or no supervision of a dental hygienist by a licensed dentist.

(21) “Public health setting” means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs and any other place designated by the board by rule.

(22) “Specialty” means the practice of a certain branch of dentistry.

§30-4-5. Powers of the board.

The board has all the powers set forth in article one of this chapter and in addition may:
(1) Sue and be sued in its official name as an agency of this state;

(2) Hire, fix the compensation of and discharge the employees necessary to enforce the provisions of this article;

(3) Examine and determine the qualifications of any applicant for a license;

(4) Examine and determine the qualifications of any applicant for a certificate of qualification;

(5) Issue, renew, deny, suspend, revoke, limit or reinstate licenses and discipline licensees;

(6) Issue, renew, deny, suspend, revoke, limit or reinstate certificates of qualification and discipline holders of a certificate of qualification;

(7) Investigate alleged violations of the provisions of this article and article four-b of this chapter reasonable regulations promulgated hereunder and orders and final decisions of the board;

(8) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

(9) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(10) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-4-6. Rule-making authority.

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter
twenty-nine-a of this code to implement the provisions of this article including, but not limited to, the following:

1. The examinations administered under this article;
2. Issuing and renewing a license;
3. Issuing temporary permits, teaching permits and dental intern or resident permits;
4. Specialities that a dentist may practice;
5. Issuing and renewing a certificate of qualification;
6. Denying, suspending, revoking, reinstating or limiting the practice of a licensee or certificate of qualification;
7. Continuing education requirements for licensees;
8. Delegated procedures to be performed by a dental hygienist;
9. Designating the services and procedures requiring or allowing direct supervision, general supervision and public health practice to be completed and filed as an emergency rule no later than the first day of July, two thousand eight;
10. Delegated procedures to be performed by a dental assistant;
11. Use of firm or trade names;
12. Dental corporations; and
13. Professional conduct requirements.

(b) All rules in effect on the effective date of this article shall remain in effect until they are withdrawn, revoked or amended.
§30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.

(a) The board may issue a temporary permit to practice dentistry to an applicant who:

(1) Has graduated from an approved dental college, school or dental department of a university with a degree in dentistry;

(2) Has been offered employment under the direct supervision of a licensed dentist;

(3) Has paid the application fee specified by rule; and

(4) Meets the other qualifications specified by rule by the board in accordance with the provisions of this article.

(b) A temporary permit to practice dentistry may not be renewed and expires on the earlier of:

(1) The date the dentist ceases to be under the direct supervision of a licensed dentist; or

(2) Sixty days after issuance.

(c) The board shall issue a dental intern or dental resident permit to an applicant who meets the qualifications set forth in subdivisions (1), (3) and (4), subsection (a) of this section and who has been accepted as a dental intern or dental resident by a licensed hospital or dental school in this state which maintains an established dental department under the supervision of a licensed dentist.

(d) The dental intern or dental resident permit may be renewed and expires on the earlier of:
(1) The date the permit holder ceases to be a dental intern or dental resident; or

(2) One year after the date of issue.

(e) The board shall issue a teaching permit to an applicant who meets the qualifications set forth in subdivisions (1), (3) and (4), subsection (a) of this section and who has been certified by the dean of a dental school located in this state to be a member of the teaching staff of the dental school.

(f) A teaching permit is valid for one year from the date of issue and may be renewed.

(g) While in effect, a temporary permit to practice dentistry, a permit to practice as a dental intern or dental resident and a teaching permit are subject to the restrictions and requirements imposed by this article. In addition, the holder of a permit to practice as a dental intern or dental resident may not receive any fee for service other than a salary paid by the hospital or dental school and the holder of a teaching permit may only practice dentistry within the facilities of the dental school.

§30-4-14. Temporary permits; teaching permit; dental hygienist.

(a) The board may issue a temporary permit to practice dental hygiene to an applicant who:

(1) Has graduated from an approved dental hygiene program of a college, school or dental department of a university with a degree in dental hygiene;

(2) Has been offered employment as a dental hygienist;

(3) Has paid the application fee specified by rule; and
(4) Meets the other qualifications specified by rule by the board, in accordance with the provisions of this article.

(b) A temporary permit to practice dental hygiene shall not be renewed and expires on the earlier of:

(i) The date the dental hygienist ceases to be employed; or

(ii) Sixty days after issuance.

(c) The board may issue a teaching permit to an applicant who meets the qualifications set forth in subdivisions (1), (3) and (4), subsection (a) of this section and who has been certified by the dean of a dental school located in this state to be a member of the teaching staff of the dental school.

(d) A teaching permit is valid for one year from the date of issue and may be renewed.

(e) While in effect, a temporary permit to practice dental hygiene and a teaching permit are subject to the restrictions and requirements imposed by this article. In addition, the holder of a teaching permit may only practice dental hygiene within the facilities of the dental school.

§30-4-15. Scope of practice; dentist.

The practice of dentistry includes the following:

(1) Coordinating dental services to meet the oral health needs of the patient;

(2) Examining, evaluating and diagnosing diseases, disorders and conditions of the oral cavity, maxillofacial area and adjacent and associated structures;
(3) Treating diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(4) Providing services to prevent diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(5) Fabricating, repairing or altering a dental prosthesis;

(6) Administering anesthesia in accordance with the provisions of article four-a of this chapter;

(7) Prescribing drugs necessary for the practice of dentistry;

(8) Executing and signing a death certificate when it is required in the practice of dentistry;

(9) Employing and supervising dental auxiliary personnel;

(10) Authorizing delegated procedures to be performed by dental auxiliary personnel; and

(11) Performing any other work included in the curriculum of an approved dental school, college or dental department of a university.

§30-4-21. Complaints; investigations.

(a) Upon receipt of a written complaint filed against any dentist or dental hygienist, the board shall provide a copy of the complaint to the dentist or dental hygienist as specified by legislative rule promulgated by the board.

(b) The board may investigate the complaint. If the board finds upon investigation that probable cause exists that the
dentist or dental hygienist has violated any provision of this article or the rules, the board shall serve the dentist or dental hygienist with a written statement of charges and a notice specifying the date, time and place of hearing. The hearing shall be held in accordance with section twenty-two of this article.

CHAPTER 163

(S.B. 722 - By Senators Prezioso and Unger)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §30-5-1b, §30-5-3, §30-5-14 and §30-5-21 of the Code of West Virginia, 1931, as amended, all relating to regulation by the Board of Pharmacy of ambulatory health care facilities and free clinics who dispense pharmaceuticals; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §30-5-1b, §30-5-3, §30-5-14 and §30-5-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1b. Definitions.
§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.
§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.
§30-5-21. Limitations of article.
§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. "Charitable clinic pharmacy" means a clinic or facility organized as a not-for-profit corporation that offers pharmaceutical care and dispenses prescriptions free of charge to appropriately screened and qualified indigent patients. The Board of Pharmacy shall promulgate rules regarding the minimum standards for a charitable clinic pharmacy and rules regarding the applicable definition of a pharmacist-in-charge, who may be a volunteer, at charitable clinic pharmacies: Provided, That the charitable clinic pharmacies shall be exempt from licensure by the board until rules are in effect for a charitable clinic pharmacy. A charitable clinic pharmacy may not be charged any applicable licensing fees and such clinics may receive donated drugs.

4. "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.

5. "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.

(6) "Compounding" means:

(A) The preparation, mixing, assembling, packaging or labeling of a drug or device:

(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; and

(B) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(7) "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.

(8) "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.

(9) "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."

(10) "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.

(11) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(12) "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.

(13) "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.

(14) "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.

(15) "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.
(16) "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”.

(17) "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.

(18) "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.
(19) "Mail-order pharmacy" means a pharmacy, regardless of its location, which dispenses greater than ten percent prescription drugs via the mail.

(20) "Manufacturer" means a person engaged in the manufacture of drugs or devices.

(21) "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.

(22) "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.

(23) "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.

(24) "Person" means an individual, corporation, partnership, association or any other legal entity, including government.

(25) "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.

(26) "Pharmacist" or "registered pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care.

(27) "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.

(28) "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 Osteopathy.

(29) "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.

(30) "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.

(31) "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.
"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.

"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.

"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.

"Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient.

"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.
§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

(a) It is unlawful for any person not a pharmacist, or who does not employ a pharmacist, to conduct any pharmacy or store for the purpose of retailing, compounding or dispensing prescription drugs or prescription devices.

(b) It is unlawful for the proprietor of any store or pharmacy, any ambulatory health care facility, as that term is defined in section one, article five-b, chapter sixteen of this code, that offers pharmaceutical care, or a facility operated to provide health care or mental health care services free of charge or at a reduced rate and that operates a charitable clinic pharmacy to permit any person not a pharmacist to compound or dispense prescriptions or prescription refills or to retail or dispense the poisons and narcotic drugs named in sections two, three and six, article eight, chapter sixteen of this code: Provided, That a licensed intern may compound and dispense prescriptions or prescription refills under the direct supervision of a pharmacist: Provided, however, That registered pharmacy technicians may assist in the preparation and dispensing of prescriptions or prescription refills, including, but not limited to, reconstitution of liquid medications, typing and affixing labels under the direct supervision of a licensed pharmacist.
It is the duty of a pharmacist or employer who employs an intern to license the intern with the board within ninety days after employment. The board shall furnish proper forms for this purpose and shall issue a certificate to the intern upon licensure.

(d) The experience requirement for licensure as a pharmacist shall be computed from the date certified by the supervising pharmacist as the date of entering the internship. If the internship is not registered with the Board of Pharmacy, then the intern shall receive no credit for such experience when he or she makes application for examination for licensure as a pharmacist: Provided, That credit may be given for such unregistered experience if an appeal is made and evidence produced showing experience was obtained but not registered and that failure to register the internship experience was not the fault of the intern.

(e) An intern having served part or all of his or her internship in a pharmacy in another state or foreign country shall be given credit for the same when the affidavit of his or her internship is signed by the pharmacist under whom he or she served, and it shows the dates and number of hours served in the internship and when the affidavit is attested by the secretary of the state Board of Pharmacy of the state or country where the internship was served.

(f) Up to one third of the experience requirement for licensure as a pharmacist may be fulfilled by an internship in a foreign country.

(g) No pharmacist may compound or dispense any prescription order when he or she has knowledge that the prescription was issued by a practitioner without establishing an ongoing practitioner-patient relationship. An online or telephonic evaluation by questionnaire is inadequate to establish an appropriate practitioner-patient relationship: Provided, That this prohibition does not apply:
(1) In a documented emergency;

(2) In an on-call or cross-coverage situation; or

(3) Where patient care is rendered in consultation with another practitioner who has an ongoing relationship with the patient and who has agreed to supervise the patient’s treatment, including the use of any prescribed medications.

§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.

(a) The Board of Pharmacy shall require and provide for the annual registration of every pharmacy doing business in this state, including an ambulatory health care facility, as that term is defined in section one, article five-b, chapter sixteen of this code, who offers pharmaceutical care, and a facility operated to provide health care or mental health care services free of charge or at a reduced rate and who operates charitable clinic pharmacy. Any person, firm, corporation or partnership desiring to operate, maintain, open or establish a pharmacy in this state shall apply to the Board of Pharmacy for a permit to do so. The application for such permit shall be made on a form prescribed and furnished by the Board of Pharmacy, which, when properly executed, shall indicate the owner, manager, trustee, lessee, receiver or other person or persons desiring such permit, as well as the location of such pharmacy, including street and number, and any other information as the Board of Pharmacy may require. If it is desired to operate, maintain, open or establish more than one pharmacy, separate application shall be made and separate permits or licenses shall be issued for each.

(b) Every initial application for a permit shall be accompanied by the required fee of one hundred fifty dollars. The fee for renewal of such permit or license shall be one hundred dollars annually.
(c) If an application is approved, the Secretary of the Board of Pharmacy shall issue to the applicant a permit or license for each pharmacy for which application is made. Permits or licenses issued under this section shall not be transferable and shall expire on the thirtieth day of June of each calendar year and if application for renewal of permit or license is not made on or before that date, or a new one granted on or before the first day of August, following, the old permit or license shall lapse and become null and void and shall require an inspection of the pharmacy and a fee of one hundred fifty dollars plus one hundred fifty dollars for the inspection.

(d) Every place of business so registered shall employ a pharmacist in charge and operate in compliance with the general provisions governing the practice of pharmacy and the operation of a pharmacy.

(e) The provisions of this section shall have no application to the sale of nonprescription drugs which are not required to be dispensed pursuant to a practitioner's prescription.

§30-5-21. Limitations of article.

(a) Nothing in this article shall be construed to prevent, restrict or in any manner interfere with the sale of nonnarcotic nonprescription drugs which may be lawfully sold without a prescription in accordance with the United States Food, Drug and Cosmetic Act or the laws of this state, nor shall any rule be adopted by the board which shall require the sale of nonprescription drugs by a licensed pharmacist or in a pharmacy or which shall prevent, restrict or otherwise interfere with the sale or distribution of such drugs by any retail merchant. The sale or distribution of nonprescription drugs shall not be deemed to be improperly engaging in the practice of pharmacy.
(b) Nothing in this article shall be construed to interfere with any legally qualified practitioner of medicine, dentistry or veterinary medicine, who is not the proprietor of the store for the dispensing or retailing of drugs and who is not in the employ of such proprietor, in the compounding of his or her own prescriptions or to prevent him or her from supplying to his or her patients such medicines as he or she may deem proper, if such supply is not made as a sale.

(c) The exception provided in subsection (b) of this section does not apply to an ambulatory health care facility, as that term is defined in section one, article five-b, chapter sixteen of this code, that offers pharmaceutical care or a facility operated to provide health care or mental health care services free of charge or at a reduced rate that operates a charitable clinic pharmacy: Provided, That a legally licensed and qualified practitioner of medicine or dentistry may supply medicines to patients that he or she treats in a free clinic and that he or she deems appropriate.

CHAPTER 164

(Com. Sub. for H.B. 3056 - By Delegates Perdue, Marshall, Evans, Fleischauer, Guthrie, Staggers and Eldridge)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-5-30, relating to authorization for pharmacists to administer immunizations, setting forth limitations on those immunizations as to type of immunizations and age of the recipient; establishing training
requirements, establishing reporting requirements; providing rule making authority and requiring annual reporting to the West Virginia Board of Pharmacy.

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 §30-5-30, to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-30. Administration of immunizations.

(a) A pharmacist licensed under the provisions of this article and meeting the requirements of this section may administer immunizations for the following to any person eighteen years of age or older: Influenza and Pneumonia.

(b) The Board of Pharmacy with the advice of the Board of Medicine and the Board of Osteopathy shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section. These rules shall provide, at a minimum, for the following:

(1) Establishment of a course, or provide a list of approved courses, in immunization administration. The courses must be based on the standards established for such courses by the Centers for Disease Control and Prevention in the public health service of the United States Department of Health and Human Services;

(2) Definitive treatment guidelines which shall include, but not be limited to, appropriate observation for an adverse reaction of an individual following an immunization;
(3) Prior to administration of immunizations, a pharmacist shall have completed a board approved immunization administration course and completed an American Red Cross or American Heart Association basic life-support training, and maintain certification in the same.

(4) Continuing education requirements for this area of practice;

(5) Reporting requirements for pharmacists administering immunizations to report to the primary care physician or other licensed health care provider as identified by the person receiving the immunization;

(6) Reporting requirements for pharmacists administering immunizations to report to the West Virginia Statewide Immunization Information (WVSII);

(7) That a pharmacist may not delegate the authority to administer immunizations to any other person; and

(8) Any other provisions necessary to implement the provisions of this section.

(c) The Board of Pharmacy, the Board of Medicine and the Board of Osteopathy may propose joint rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to permit pharmacists licensed under the provisions of this article to administer other immunizations such as Hepatitis A, Hepatitis B, Herpes Zoster and Tetanus. These rules, if promulgated, shall provide at a minimum the same provisions contained in subsections (b)(1) through (b)(8) of this section.
CHAPTER 165


[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §30-7-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-7A-2 of said code, all relating to limiting the use of the titles of nurses.

Be it enacted by the Legislature of West Virginia:

That §30-7-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §30-7A-2 of said code be amended and reenacted, all to read as follows:

Article
7. Registered Professional Nurses.
7A. Practical Nurses.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-10. Use of titles.

1 Any person licensed pursuant to this article may use the title "registered nurse" and the abbreviation "R.N." or the term “nurse”. Except as otherwise provided in article seven-a of this chapter, no other person may assume a title or use abbreviations or any other words, letters, figures, signs, or devices to indicate that the person using the same is a registered professional nurse.
ARTICLE 7A. PRACTICAL NURSES.

§30-7A-2. Use of titles.

1 (a) Any person licensed pursuant to this article may use
2 the title “licensed practical nurse,” “practical nurse” and the
3 abbreviation “L.P.N” or the term “nurse”. Except as
4 otherwise provided in article seven of this chapter, no other
5 person may assume such title, or use such abbreviation, or
6 any other words, letters, figures, signs, or devices to indicate
7 that the person using the same is a licensed practical nurse or
8 a practical nurse.

CHAPTER 166

(Com. Sub. for H.B. 4474 - By Delegates Hatfield, Wysong,
Brown, Moye and Rodighiero)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §30-7-19, relating
to registered nurses required in operating rooms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be
amended by adding thereto a new section, designated §30-7-19, to
read as follows:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-19. Circulating registered nurses.
1 A registered nurse as defined in this article, qualified by
2 education, licensed, and experienced in operating room
3 nursing, shall be present as a circulating nurse in each
4 operating room in a hospital, or ambulatory surgical center as
5 defined by section one, article five-b, chapter sixteen of this
6 code, during operative procedures.

CHAPTER 167

(Com. Sub. for H.B. 4494 - By Delegates Morgan, White,
Campbell, Hutchins, Higgins, Palumbo, Andes and Kominar)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §30-9-2, §30-9-8, §30-9-13,
§30-9-16, §30-9-17, §30-9-19 and §30-9-26 of the Code of
West Virginia, 1931, as amended, all relating to the regulation
of the practice of accountancy; adding definitions; clarifying
references to auditing standards; reducing accountancy firm
ownership requirements from sixty percent to a simple
majority; modifying education, examination and experience
requirements for certificates; eliminating certain notice
requirements for substantial equivalency practitioners; revising
criteria to determine substantial equivalency practice privileges;
providing conditions for substantial equivalency practice
privileges; allowing out-of-state firms to practice in this state
without permits in certain circumstances; requiring the board
to investigate complaints from boards of other states; allowing
certain services to be performed by persons or business entities
without authorizations in certain circumstances; and clarifying
unlawful acts.
Be it enacted by the Legislature of West Virginia:

That §30-9-2, §30-9-8, §30-9-13, §30-9-16, §30-9-17, §30-9-19 and §30-9-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.

§30-9-8. Education, examination and experience certificate requirements.


§30-9-17. Issuance and renewal of permits.


§30-9-2. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context or associated language clearly indicates otherwise:

(1) “Affiliated entity” means an entity that controls, is controlled by, or is under common control with, a firm. For purposes of this definition, an entity controls another entity if the entity directly or indirectly or acting in concert with one or more other affiliated entities, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than fifty percent of the voting interest in such entity.

(2) “Assurance” means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting standards.

(3) “Attest services” means providing any:
(A) Audit or other engagement to be performed in accordance with the Statements on Auditing Standards;

(B) Review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services;

(C) Examination of prospective financial information to be performed in accordance with applicable Statements on Standards for Attestation Engagements; or

(D) Engagement to be performed in accordance with the Auditing Standards of the Public Company Accounting Oversight Board.

(4) “Audit” means expressing an opinion about the fairness of presentation of financial statements in accordance with the Statements on Auditing Standards.

(5) "Authorization" means an authorization issued pursuant to this article that entitles a permit holder or an individual practitioner to perform attest or compilation services.

(6) “Board” means the West Virginia Board of Accountancy.

(7) “Business entity” means any corporation, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, business trust or any other form of business organization. The term “business entity” includes a firm.

(8) "Certificate" means a certificate as a certified public accountant issued or renewed by the board pursuant to this article or corresponding provisions of prior law.
(9) “Certified public accountant” or “CPA” means the holder of a certificate.

(10) “Client” means a person or entity that agrees with a licensee or licensee’s employer to receive any professional service.

(11) “Commission” means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person.

(12) “Compilation services” means providing a service performed in accordance with the Statements on Standards for Accounting and Review Services that presents, in the form of a financial statement, information that is the representation of management without an expression of assurance on the statement: Provided, That this definition does not apply to the use of the term “compilation” in section thirty-one of this article.

(13) “Contingent fee” means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service. A fee fixed by a court, taxing authority or other public authority is not a contingent fee.

(14) “Examination,” when used with reference to prospective financial statements, means expressing an opinion about the fairness of presentation of financial information in accordance with the Statements on Standards for Attestation Engagements.

(15) “Financial statement” means a writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial
position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

(16) “Firm” means any business entity, including but not limited to accounting corporations and professional limited liability companies, in which two or more certified public accountants or public accountants hold an ownership or membership interest, in terms of the financial interests and voting rights of all partners, officers, shareholders, members or managers, and the primary business activity of which is the provision of professional services to the public by certified public accountants or public accountants.

(17) “Firm ownership requirements” means, with respect to:

(A) Any professional limited liability company organized pursuant to article thirteen, chapter thirty-one-b of this code, consisting of one or more licensed certified public accountants or licensed public accountants;

(B) Any other firm where:

(i) A simple majority of ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs either to:

(I) Certified public accountants holding a certificate under section twelve of this article or the equivalent provision of another state; or

(II) Public accountants who have met the continuing professional education requirements of subsection (b), section twelve of this article and who are not subject to the exemption or limitation set forth in subdivisions (1) or (2),
subsection (b), section twelve of this article or similar provisions of another state.

(ii) All owners of the firm who are not certified public accountants or public accountants are active participants in the firm or in affiliated entities.

(18) “Foreign” means any country other than the United States.

(19) “Good moral character” means lack of a history of dishonesty or felonious activity.

(20) “Home office” means the client’s office address.

(21) “Individual practitioner” means a certified public accountant or a public accountant who offers professional services to the public but who does not practice in a firm.

(22) "License" means a certificate, permit, registration or authorization.

(23) "Licensee" means the holder of a license.

(24) "Manager" means a manager of a professional limited liability company.

(25) "Member" means a member of a professional limited liability company.

(26) “Nonlicensee” means a person or business entity that does not hold a license.

(27) “Out-of-state certificate” means a valid certificate as a certified public accountant or equivalent designation issued or renewed under the laws of another state: Provided, That “out-of-state certificate” does not include any certificate as a
certified public accountant or equivalent designation that was issued or renewed solely by virtue of a holder’s prior status as a public accountant or its equivalent in the state of issuance and not by virtue of the holder’s having met the certification requirements of the state of issuance.

(28) “Out-of-state permit” means a valid permit as a firm of certified public accountants or another designation equivalent to a permit issued or renewed by the board and that is issued or renewed under the laws of another state.

(29) "Peer Review" means a study, appraisal or review of one or more aspects of the professional work of a licensee by a person who holds a certificate or an out-of-state certificate and who is not affiliated with the licensee being reviewed.

(30) "Permit" means a permit issued to a firm pursuant to this article.

(31) “Principal place of business” means the licensee’s office location in the state where the licensee holds a certificate or registration.

(32) “Professional services” means those services that involve the specialized knowledge and skills of a certified public accountant or a public accountant delivered by any means, including but not limited to, in person, by mail, telephone or by electronic means.

(33) “Public accountant” means a person holding a registration who is not a certified public accountant.

(34) “Referral fee” means compensation for recommending or referring any service of a licensee to any person.

(35) “Registration” means a registration as a public accountant issued by the board pursuant to prior law
governing the registration of public accountants and renewed
by the board pursuant to this article.

(36) "Report," when used with reference to financial
statements, means an opinion or disclaimer of opinion or
other form of language or representation which states or
implies any form of assurance or denial of assurance.

(37) "Rule" means any rule proposed for legislative
approval by the board pursuant to this article.

(38) "State" means any state of the United States, the
District of Columbia, Puerto Rico, the U.S. Virgin Islands or
Guam.

(39) “Substantial equivalency” or “substantially equivalent”
means or refers to a determination by the board or its
designee that the education, examination and experience
requirements contained in the statutes or rules of another
state are comparable to or exceed the education, examination
and experience requirements contained in the Uniform
Accountancy Act, or that an individual certified public
accountant’s education, examination and experience
qualifications are comparable to or exceed the education, ex-
amination and experience requirements contained in the
Uniform Accountancy Act.

(40) “Substantial equivalency practitioner” means any
individual whose principal place of business is not in this
state, who holds a certificate from another state and has
complied with the provisions of section sixteen of this article.

(41) “Uniform Accountancy Act” means the Uniform
Accountancy Act, fifth edition, revised (July 2007), jointly
published by the American Institute of Certified Public
Accountants and the National Association of State Boards of
Accountancy.
§30-9-8. Education, examination and experience certificate requirements.

The board shall issue a certificate to an applicant of good moral character who meets the following requirements:

1. At least one hundred fifty semester hours of college education including a baccalaureate or higher degree conferred by a college or university, the total education program to include an accounting concentration or equivalent, as determined by the board to be appropriate;

2. Passage of the uniform certified public accountant examination published by the American institute of certified public accountants or its successor and any additional examination required by the board by rule that tests the applicant's knowledge of subjects related to the practice of accounting: Provided, That before applying for the examination required by this subsection, an applicant is required to have met the baccalaureate degree requirement but not the one hundred fifty semester hour requirement of subsection (1) of this section; and

3. At least one year of experience in providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. The experience requirement may be satisfied by employment in private practice, government, industry, not-for-profit organization, academia or public practice. An applicant’s experience must be verified by a licensee and must meet requirements specified by rule.


Each licensee must notify the board, within thirty days of its occurrence, of any denial, suspension or revocation of or any limitation placed on a license or out-of-state certificate.

(a) An individual whose principal place of business is not in this state and who holds an out-of-state certificate has all the rights and privileges of a certificate holder of this state without the need to obtain a certificate if:

1. The state that issued the out-of-state certificate has certification requirements that are substantially equivalent to the certification requirements of the Uniform Accountancy Act; or

2. The individual holds a valid license as a certified public accountant from any state which the National Association of State Boards of Accountancy National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act and the individual has obtained from the National Association of State Boards of Accountancy National Qualification Appraisal Service verification that his or her CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act. Any individual who qualifies for practice privileges pursuant to this subdivision before the first day of January, two thousand twelve, and who passed the uniform CPA examination and holds a valid license issued by any other state is exempt from the education requirement in the Uniform Accountancy Act for purposes of this section.

(b) An individual who offers or renders professional services under this section shall be granted practice privileges in this state, and no notice, fee, or other submission is required of any such individual. Such an individual is subject to the requirements in subsection (c) of this section.

(c) (1) Any individual performing or offering to perform any services in the state as a substantial equivalency practitioner
and the firm which employs that out-of-state certificate holder are simultaneously subject to the jurisdiction of the board concerning all matters within the scope of this article and are required to comply with the provisions of this article and applicable rules.

(2) The state board of accountancy of the state of issuance of any substantial equivalency practitioner’s certificate is appointed as his or her agent upon which process may be served in an action or proceeding by the board.

(d) In the event the certificate from the state of the individual’s principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm.

(e) Subject to the provisions of subsection (f) of this section, an individual who qualifies for the practice privileges under this section may only perform any of the following services, for any entity with its home office in this state, through a firm which has obtained a permit issued under section seventeen of this article and an authorization issued under section nineteen of this article:

(1) A financial statement audit or other engagement to be performed in accordance with the Statements on Auditing Standards;

(2) An examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(3) An engagement to be performed in accordance with the Auditing Standards of the Public Company Accounting Oversight Board.
(f) An individual practitioner who is also a substantial equivalency practitioner may provide the services set out in subsection (e) of this section without obtaining a permit issued under section seventeen of this article, but must obtain the authorization issued under section nineteen of this article.

(g) A certificate holder of this state offering or rendering services or using their CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the certificate holder would be subject to discipline in that other state.

(h) The board shall investigate any complaint made by the board of accountancy of another state.

§30-9-17. Issuance and renewal of permits.

(a) The board shall grant or renew permits to firm applicants that demonstrate their qualifications in accordance with this section.

(b) Firms meeting the following criteria must hold a permit issued under this section:

(1) Any firm with an office in this state performing attest or compilation services;

(2) Any firm with an office in this state that uses the title “CPA” or “CPA firm”; or

(3) Any firm that does not have an office in this state but performs attest services described in subdivisions (A), (C) or (D), subsection (3), section two of this article for a client having its home office in this state.

(c) A firm that does not have an office in this state may perform services described in subdivision (B), subsection (3),
section two of this article, or subsection (12), section two of this article, for a client having its home office in this state and may use the title “CPA” or “CPA firm” without a permit issued under this section only if it meets firm ownership requirements and is undergoing a peer review program that conforms with applicable rules, and performs the services through an individual with practice privileges under section sixteen of this article.

(d) A firm that does not have an office in this state and does not perform attest services or compilation services for a client having its home office in this state may perform other professional services while using the title “CPA” or “CPA firm” in this state without a permit issued under this section only if it performs the services through an individual with practice privileges under section sixteen of this article: Provided, That the firm may lawfully perform the services in the state where the individuals with practice privileges have their principal place of business.

(e) Applicants for a permit must demonstrate that:

(1) Each partner, officer, shareholder, member or manager of the firm whose principal place of business is in this state and who performs or offers to perform professional services in this state holds a certificate or a registration; and

(2) The firm meets firm ownership requirements.

(f) An application for the issuance of a permit must be made in the form specified by the board by rule and must include the following information:

(1) The names of all partners, officers, shareholders, members or managers of the firm whose principal place of business is in this state;
(2) The location of each office of the firm within this state and the name of the certified public accountant or public accountant in charge of each office; and

(3) Any issuance, denial, revocation or suspension of an out-of-state permit.

(g) Permits will initially be issued for a period to expire on the thirtieth day of June following the date of issue.

(h) The board shall renew a permit for a one-year period beginning on the first day of July of each year after initial issuance in accordance with the requirements for initial issuance of a permit in this section.

(i) The board shall charge an application fee for the initial issuance or renewal of a permit in an amount specified by rule.


(a) Commencing with the first day of July, two thousand one, no person or business entity may provide attest or compilation services without having first obtained an authorization issued by the board. An applicant may apply to provide attest services or compilation services or both. This requirement does not apply to individuals performing attest or compilation services based on the practice privilege under section sixteen of this article except as required under subsection (e) of that section, or to business entities performing attest or compilation services that are not required to obtain a permit under subsections (c) or (d), section seventeen of this article. Any substantial equivalency practitioner who issues a compilation report as an individual practitioner or on behalf of a business entity may do so without obtaining an authorization under this section so long as such individual does so in accordance with the
(b) Applications for the issuance of authorizations must be made in the form specified by the board by rule.

(c) Authorizations will initially be issued for a period to expire on the thirtieth day of June following the date of initial issuance.

(d) The board shall issue an authorization to a permit holder that demonstrates that:

(1) Any certified public accountant, public accountant or substantial equivalency practitioner who signs or authorizes someone to sign an attest or compilation report on behalf of the permit holder meets the competency requirements set forth in the professional standards for those services specified by rule;

(2) All attest and compilation services rendered by the permit holder in this state are verified by a certified public accountant, substantial equivalency practitioner or a public accountant; and

(3) The permit holder is undergoing a peer review program that conforms with applicable rules.

(e) A firm may simultaneously apply for the issuance or renewal of a permit and the issuance or renewal of an authorization by demonstrating that the firm meets the requirements of section seventeen of this article and subsection (d) of this section.

(f) The board shall issue an authorization to an individual practitioner who demonstrates that he or she:
(1) Signs an attest or compilation report as a certified public accountant, public accountant or substantial equivalency practitioner, as applicable and meets the competency requirements set forth in the professional standards for those services specified by rule; and

(2) Is undergoing a peer review program that conforms with applicable rules.

(g) The board shall renew an authorization for a one year period beginning on the first day of July of each year after initial issuance in accordance with the requirements for initial issuance of an authorization in this section.

(h) The board shall charge an application fee for the initial issuance or renewal of an authorization in an amount specified by rule.


(a) No authorization holder or substantial equivalency practitioner may perform attest or compilation services in a manner other than pursuant to the standards on standards relating to those services specified by rule.

(b)(1) No licensee or substantial equivalency practitioner or firm may, for a commission or referral fee, recommend or refer to a client any product or service or refer any product or service to be supplied by a client, or perform for a contingent fee any professional services for or receive a referral fee, commission or contingent fee from a client for whom the licensee, the substantial equivalency practitioner or firm works or associates or in which either of them owns an interest or who performs for that client:

(A) An audit or review of a financial statement;
(B) A compilation of a financial statement when the licensee or substantial equivalency practitioner expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence; or

(C) An examination of prospective financial information.

(2) The prohibition in subdivision one of this subsection applies only during the period in which the licensee or substantial equivalency practitioner is engaged to perform any of the services listed in subdivision (1) of this subsection and the period covered by any historical financial statements involved in any of those listed services.

(c) No licensee or substantial equivalency practitioner may for a contingent fee prepare an original or amended tax return or claim for a tax refund or serve as an expert witness.

(d) No licensee may use a professional or firm name or designation that: (1) Is deceptive or misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter; or (2) contains a name or term other than past or present partners, officers, members, managers or shareholders of the firm or of a predecessor firm engaged in the practice of accounting.

(e) No person or firm that does not hold an authorization to perform attest services, or is not otherwise exempt from the authorization requirement, may perform or offer to perform attest services, and no person or firm that does not hold an authorization to perform compilation services, or is not otherwise exempt from the authorization requirement, may perform or offer to perform compilation services.

(f) No individual practitioner who holds an authorization may perform or offer to perform attest services for a client of
his or her employer through or on behalf of his or her employer.

(g) No person who is not a certified public accountant, a public accountant or a substantial equivalency practitioner may:

(1) Issue a report on financial statements of any other person, business entity, or governmental unit or otherwise render or offer to render any attest or compilation service: Provided, That this subdivision does not prohibit any act of a public official or public employee in the performance of that person's duties or the performance by any person of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon: Provided, however, That this subdivision does not prohibit any person who is not a certified public accountant, a public accountant or a substantial equivalency practitioner to prepare financial statements or issue nonattest transmittals of information thereon that do not purport to have been performed in accordance with the applicable statements on standards;

(2) Claim to hold a certificate, registration or authorization or make any other claim of licensure or approval related to the preparation of financial statements or the issuance of reports thereon that is false or misleading;

(3) Claim to have used “generally accepted accounting principles,” “generally accepted accounting standards,” “public accountancy standards,” “public accountancy principles,” “generally accepted auditing principles” or “generally accepted auditing standards” in connection with the preparation of any financial statement, or use any of these terms to describe any complete or partial variation from those standards or principles or to imply complete or partial conformity with those standards or principles;
(4) State or imply that he or she is tested, competent, qualified or proficient in financial standards established by the American institute of certified public accountants or any agency thereof, the governmental accounting standards board or any agency thereof, the securities and exchange commission or any agency thereof, the financial accounting standards board or any agency thereof, or any successor entity to any of these entities;

(5) Assume or use the titles "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "Auditor," "independent Auditor" or any other title or designation that a reasonable person may confuse with the titles "certified public accountant" or "public accountant," or assume or use the abbreviations "CA," "LA," "RA," or similar abbreviation that a reasonable person may confuse with the abbreviations "CPA" or "PA": Provided, That the title "Enrolled Agent" and the abbreviation “EA” may only be used by individuals so designated by the Internal Revenue Service;

(6) Use language in any statement relating to the financial affairs of a person or entity that is conventionally used by a licensee in a report on a financial statement;

(7) Use the words “audit,” “audit report,” “independent audit,” “examine,” “examination,” “opinion” or “review” in a report on a financial statement;

(8) Assume or use any title that includes the words "accountant," "Auditor," or "accounting" in connection with any other language (including the language of a report) that implies that the person or business entity holds a license or has special competence in accounting or auditing: Provided, That this subdivision does not prohibit any officer, partner, member, manager or employee of any business entity from affixing that person's own signature to any statement in reference to the financial affairs of the business entity with
any wording designating the position, title, or office that the
person holds therein, nor does it prohibit any act of a public
official or employee in the performance of the person's
duties;

(9) Use or assume the title "certified public accountant,"
the abbreviation "CPA," or any other title, designation, word,
combination of letters, abbreviation, sign, card or device that
may lead a reasonable person to believe that the person is a
certified public accountant or the holder of an out-of-state
certificate; or

(10) Assume or use the title "public accountant," the
abbreviation "PA," or any other title, designation, word,
combination of letters, abbreviation, sign, card or device that
may lead a reasonable person to believe that the person is a
public accountant.

(h) Only a business entity that holds a permit or is exempt
from the permit requirement under subsections (c) or (d),
section seventeen of this article, may assume or use the
designations "certified public accountants," "CPA firm,"
"public accountants," or "PA firm" or the abbreviations
"CPAs," or "PAs," or any other title, designation, word,
combination of letters, abbreviation, sign, card or device that
may lead a reasonable person to believe that the business
entity is a firm or holds a permit.

(i) The display or uttering by a person of any printed,
engraved or written instrument, bearing the name of the
person in conjunction with any of the claims, titles, words or
phrases listed in this section is, for purposes of this section,
prima facie evidence that the person has engaged in the acts.

(j) Notwithstanding any provision in this section to the
contrary, it is not a violation of this section for a firm or
business entity which does not hold a permit under section
seventeen or an authorization under section nineteen of this
article and which does not have an office in this state to
provide its professional services in this state so long as it
complies with subsection (c) or (d) of section seventeen,
whichever is applicable, and with any applicable provision of
section nineteen of this article.

CHAPTER 168

(H.B. 4072 - By Delegates Morgan, Martin, Argento, Caputo,
Eldridge, Hartman, D. Poling, Staggers, Swartzmiller,
Canterbury and Porter)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §30-13-25, relating
to regulatory board review of the Board of Registration for
Professional Engineers.

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 §30-13-25, to read as
follows:

ARTICLE 13. ENGINEERS.

§30-13-25. Required regulatory board review.

The Board of Registration for Professional Engineers is
subject to a regulatory board review, as required in the
provisions of article ten, chapter four of this code.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-27-18, relating to authorizing the Board of Barbers and Cosmetologists to increase fees for one year.

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 §30-27-18, to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-18. Limited fee increase.

Notwithstanding the specific fee amounts set forth in this article, the board is authorized to increase the following fees for a period of one year, commencing the first day of January, two thousand nine:

(1) For a licensing examination, a fee of fifty dollars ($50.00);

(2) For a license issued by the board, a fee of thirty-five dollars ($35.00);
9 (3) For a reciprocal license issued to a person educated or licensed in another state, a fee of one hundred dollars ($100.00); and

12 (4) For a student permit issued by the board, a fee of twenty-five dollars ($25.00).

CHAPTER 170


[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §30-31-15 of the Code of West Virginia, 1931, as amended, relating to regulatory board review of the West Virginia Board of Examiners in Counseling.

Be it enacted by the Legislature of West Virginia:

That §30-31-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Required regulatory board review.

1 The West Virginia Board of Examiners in Counseling is subject to a regulatory board review, as required in the provisions of article ten, chapter four of this code.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-34-6a; and to amend and reenact §30-34-9 of said code, all relating to the respiratory care board; authorizing emergency and legislative rules; providing for temporary student permits; and establishing fees for permits.

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 §30-34-6a; and that §30-34-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-6a. Rule-making authority.

1 (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:
Standards and requirements for licensure and permits to practice respiratory care;

(2) Procedures for examination and reexamination;

(3) Educational and experience requirements;

(4) Standards for approval of courses;

(5) Procedures for the issuance and renewal of licenses and temporary permits;

(6) Procedures which may be delegated to a student practicing under a temporary student permit;

(7) A fee schedule;

(8) Continuing education requirements for licensees;

(9) The procedure for denying, suspending, revoking, reinstating or limiting the practice of a licensee or permittee;

(10) Requirements for inactive or revoked licensees or temporary permits; and

(11) Any other rules necessary to effectuate the provisions of this article.

(b) All rules in effect on the effective date of this section remain in effect until they are amended, repealed or replaced.


(a) Subject to the provisions of subsection (d) of this section, the board may issue a temporary student permit to practice respiratory care for a period of up to six months to a student enrolled in a respiratory care educational program which is approved by the board if the student submits:
(1) A student work permit form signed by the program director and by a principal administrative official of the institution where the program is located;

(2) An official transcript indicating successful completion of a minimum of thirty semester hours or the quarter hour equivalent, eighteen of which must be specific to respiratory care core curriculum, and at least two hundred clinical hours;

(3) Documentation from the program director and by a principal administrative official of the institution where the program is located stating that the student has successfully completed didactic and clinical competency requirements equal to the first year curriculum and approved by the board; and

(4) A signed permit application form and an initial permit application fee as prescribed by rule.

(b) A student practicing under a temporary student permit may work only under the supervision of an employee of the same department with a minimum Licensed Respiratory Therapist Certified credential issued by the board and who is present on the premises and available to the student at all times.

(c) A student practicing under a temporary student permit may not use worked paid hours as a substitute for clinical rotations required by his or her respiratory care educational program.

(d) Upon expiration of the initial permit, the student may apply for one renewal permit for up to six additional months by providing documentation from the program director stating the student is actively enrolled in at least nine semester hours, and is making satisfactory progress in his or her respiratory care core curriculum and clinical rotations, and payment of a renewal fee as prescribed by rule.

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §30-36-20 of the Code of West Virginia, 1931, as amended, relating to regulatory board review of the West Virginia Acupuncture Board.

Be it enacted by the Legislature of West Virginia:

That §30-36-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-20. Required regulatory board review.

The West Virginia Acupuncture Board is subject to a regulatory board review, as required in the provisions of article ten, chapter four of this code.
AN ACT to amend and reenact §7-7-4a of the Code of West Virginia, 1931, as amended, relating to prosecuting attorneys; eliminating part-time prosecutors; allowing prosecutors to remain as part-time prosecutors, upon mutual agreement of county commissions and prosecutors; authorizing an increase in salary for a part-time prosecutor who becomes a full-time prosecutor; allowing prosecutors and counties to mutually agree to a change in part-time or full-time status; providing for a readjustment in salary if full-time prosecutor returns to part-time status; providing a mechanism for review of county finances by the state auditor to confirm the availability of county funds to support a full-time prosecutor; exceptions; and effective dates.

Be it enacted by the Legislature of West Virginia:

That §7-7-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.
(a) Notwithstanding the provisions of section four of this article to the contrary, on or before the first day of January, two thousand nine, a county may not have a part-time prosecutor. The county commissions of counties in Class VI through X shall then compensate all prosecuting attorneys that have changed to full-time by virtue of this section at the same rate of compensation established for a prosecuting attorney in a Class V county: Provided, That, upon mutual agreement of the prosecuting attorney and the county commission, the prosecuting attorney may choose to remain a part-time prosecuting attorney.

(b) If, after the first day of January, two thousand nine, during the course of a term of office, pursuant to subsection (a) of this section, any prosecutor who becomes full-time or chooses to remain part-time who believes that the responsibilities of his or her office either no longer requires a full-time position or believes that the duties of the part-time position have become full-time, may, by mutual agreement with the county commission, either return to part-time status or change to full-time status: Provided, That, if the decision to change to full-time or part-time status is made during an election year, the decision must be by mutual agreement between the county commission and the prosecutor-elect: Provided, however, That any prosecutor who returns to part-time status shall, thereafter, be compensated at the rate of compensation set forth in section four of this article for a prosecuting attorney of his or her class county and any prosecutor that changes to full-time status shall, thereafter, be compensated at the same rate of compensation established for a prosecuting attorney in a Class V county.

(c) If, after the first day of January, two thousand nine, any prosecutor or prosecutor-elect desires to change to full-time status and the county commission objects to such change due to an alleged financial condition of the county, then either party may request the State Auditor’s office to
examine the county’s financial condition and certify whether or not there are sufficient funds to support a full-time position. The State Auditor shall then, within ninety days of such request, certify whether or not there are sufficient funds available to support a full-time prosecutor in the county. If the State Auditor certifies that there are sufficient funds available, then the prosecutor or prosecutor elect must be changed to full-time status and be compensated at the same rate of pay as a prosecutor in a Class V county.

(d) Nothing in this section may be construed to prohibit a part-time prosecuting attorney from remaining part-time with the mutual agreement of the county commission.

CHAPTER 174

(Com. Sub. for S.B. 476 - By Senators Tomblin, Mr. President, Foster, Kessler and Love)

[Passed March 8, 2008; in effect from passage.] [Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §5-5-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-5-6, all relating to public employee benefits generally; providing that members of the parole board are eligible for incremental salary increases; state eligible employees hired prior to the first day of July, two thousand one, to be paid for unused sick leave days in excess of fifty days once per year; creating the State Employee Sick Leave Fund; naming the Secretary of the Department of Administration as administrator of the fund; and authorizing rulemaking to implement the provisions of this section.
Be it enacted by the Legislature of West Virginia:

That §5-5-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5-5-6, all to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

§5-5-6. Payment for unused sick leave.

§5-5-1. Definitions.

For the purposes of this article:

(a) "Eligible employee" means:

(1) Any regular full-time employee of the state or any spending unit of the state who is eligible for membership in any state retirement system of the State of West Virginia or other retirement plan authorized by the state: Provided, That the mandatory salary increase required by this article does not apply to any employee of the state whose compensation is fixed by statute or by statutory schedule other than employees described in this section. Clerks, deputy clerks and magistrate assistants of magistrate courts are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the maximum salaries and compensation for the employee offices under the magistrate court system statutes of article one, chapter fifty of this code. Members of the Board of Parole are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the salaries and compensation provided in section two-a, article seven, chapter six of this code. This article may not be construed to mandate an increase in the salary of any elected or appointed officer of the state;
(2) Any classified employee as defined in section two, article nine, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the Council for Community and Technical College Education; or

(3) Any full-time faculty member as defined in section one, article eight, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education.

(b) "Years of service" means full years of totaled service as an employee of the State of West Virginia. For full-time faculty as defined in this section, each nine or more months of contracted employment during a fiscal year equals one full year of service; and

(c) "Spending unit" means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

§5-5-6. Payment for unused sick leave.

(a) Every eligible employee, as defined in section one of this article, who was hired prior to the first day of July, two thousand one, and who has accumulated at least sixty-five days of unused sick leave may be paid, at his or her option, for unused sick leave in an amount of days as designated by the employee not to exceed the number of sick leave days that would reduce an employee’s sick leave balance to less than fifty days. The employee shall be paid at a rate equal to one quarter of their usual rate of daily pay during that calendar year. The “daily rate of pay” of an employee paid a monthly salary is calculated by multiplying the monthly salary by twelve and dividing that number into the number of workdays for that calendar year. As used in this section, “workday” does not include weekends. Any payment for
unused sick leave may not be a part of final average salary computation.

(b) Payment for unused sick leave may be made only once per fiscal year on either the pay day immediately following the first full pay period in July or the first full pay period in December. Payments shall be made out of the fund established in subsection (d) of this section.

(c) Any eligible employee opting to receive payment in exchange for unused sick leave must contract, in a form to be prescribed by the Department of Administration, agreeing to reimburse the fund for the amount exchanged plus twelve percent annum if the employee elects to separate from employment within sixty months of the date of the exchange pursuant to subsection (a) of this section. The Department of Administration shall pursue collection of the obligation, either by itself, or by contracting with a collection agency. For purposes of this section, “separation” does not include separation from employment by death or retirement, but does refer to any other manner in which employment may be terminated.

(d) Payments shall be made in the order that eligible employees apply for the payments so long as funds are available. In the event the fund is insufficient to pay all employees who have applied for payment in a fiscal year, employees who do not receive payment are eligible for payment in the next fiscal year are not required to reapply and shall receive payment in the order in which they first applied, unless the employee chooses to withdraw the application prior to the next fiscal year.

(e) Effective the first day of July, two thousand nine, there is created a special revenue account within the State Treasury to be known as the State Employee Sick Leave Fund which shall consist of moneys appropriated by the
Legislature and shall be administrated by the Secretary of the Department of Administration.

(f) The secretary shall adopt procedural rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this section. The rules shall include, but not be limited to, provisions for the application and the application process.

(g) Each spending unit, as defined in section one of this article, shall verify to the secretary an employee is eligible for payment under this section and shall verify the number of unused sick leave days for all employees at least once per year. The secretary shall maintain sick leave records for all spending units. All sick leave days that an employee is paid for as provided in this section shall be deducted from the employee’s sick leave balance by the secretary and the secretary shall verify to each spending unit the amount of days that have been deducted from an employee’s sick leave balance. An employee shall not be permitted to reacquire any sick leave days that he or she received payment for under the provisions of this section.

CHAPTER 175

(S.B. 780 - By Senators Bowman, Bailey, Barnes, Boley, Kessler, McCabe, Minard, Plymale, Sypolt, White and Yoder)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §6C-2-1, §6C-2-2, §6C-2-3 and §6C-2-4 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Public Employees Grievance
Procedure; clarifying definitions, general provisions and grievance proceedings; defining “conference” and “level one hearing”; increasing time to hold a level one hearing; deleting mediation-arbitration; adding private arbitration; clarifying level three hearing; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §6C-2-1, §6C-2-2, §6C-2-3 and §6C-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

(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. Parties to grievances shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure.
(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.

§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, secretary 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) “Discrimination” means any differences in the treatment of similarly situated employees, unless the
differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e) (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 system, an employee of the Legislature or a patient or inmate employed by a state institution.

(f) "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.

(g) "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.

(h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the
treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i) (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;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) 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.

(j) “Grievance proceeding”, “proceeding” or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) "Grievant" means an employee or group of similarly situated employees filing a grievance.
(l) "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession.

(m) “Party”, or the plural, means the grievant, intervenor, employer and the Director of the Division of Personnel or his or her designee, for state government employee grievances. The Division of Personnel shall not be a party to grievances involving higher education employees.

(n) "Representative" means any employee organization, fellow employee, attorney or other person designated by the grievant or intervenor as his or her representative and may not include a supervisor who evaluates the grievant.

(o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.


(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 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, within five days of the filing of the notice
of intent, request a hearing before an administrative law
judge for the purpose of stating a defense to the default, as
permitted by subdivision (1) 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 that the filing of the
grievance at level one was untimely shall be made at or
before level two.

(2) Back pay. -- When it is a proper remedy, back pay
may only be granted for one year prior to the filing of a
grievance, unless the grievant shows, 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, in
which case an eighteen-month limitation on back pay applies.
(3) Statutory defense. -- If a party 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 all parties.

(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 administrative law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the administrative law judge. 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 chief administrator or 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. Any similarly situated employee shall complete a grievance form stating 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 conference or level one hearing.

(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 and disciplinary action. --

(1) 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.

(2) An employee may not be compelled to testify against himself or herself in a disciplinary grievance hearing.

(h) Reprisal. -- No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding 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.

(i) Improper classification. -- A 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.

(j) Forms. -- The board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations and all other necessary documents and provide them to chief administrators to make available to any employee upon request.

(k) Discovery. -- The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.

(l) Notice. -- Reasonable notice of a proceeding shall be sent at least five days prior to the proceeding to all parties and their representatives and shall include the date, time and place of the proceeding. If an employer causes a proceeding
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.

(m) Record. -- Conferences are not required to be recorded, but all documents admitted and the decision, agreement or report become part of the record. All the testimony at a level one and level three 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 level three hearing to the court for a mandamus or appellate proceeding.

(n) Grievance decisions and reports. --

(1) Any party may propose findings of fact and conclusions of law within twenty days of an arbitration or a level three hearing.

(2) A decision, agreement or report shall be dated, in writing, setting forth the reasons for the decision or outcome and transmitted to the parties and, in a private arbitration, to the board, within the time limits prescribed. If the grievance is not resolved, the written decision or report shall include the address and procedure to appeal to the next level.

(o) Scheduling. -- All proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties in accommodation to the parties’ normal operations and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or any place. Disagreements shall be decided by the administrative law judge.

(p) Attendance and preparation. --
(1) The grievant, witnesses and an employee representative shall be granted reasonable and necessary time off during working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits.

(2) In addition to actual time spent attending grievance proceedings, 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.

(3) 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 nonwork purposes.

(4) Disagreements regarding preparation time shall be decided by the administrative law judge.

(q) Grievance files. --

(1) All grievance forms decisions, agreements 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.
(r) 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.

(s) 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 proceedings 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.

(2) Conference. -- The chief administrator shall hold a conference within ten days of receiving the grievance. A conference is a private, informal meeting between the grievant and the chief administrator to discuss the issues raised by the grievance, exchange information and attempt to resolve the grievance. The chief administrator may permit other employees and witnesses to attend and participate in a conference to reach a resolution. The chief administrator shall issue a written decision within fifteen days of the conference.
(3) **Level one hearing.** -- The chief administrator shall hold a level one hearing within fifteen days of receiving the grievance. A level one hearing is a recorded proceeding conducted in private in which the grievant is entitled to be heard and to present evidence; the formal rules of evidence and procedure do not apply, but the parties are bound by the rules of privilege recognized by law. The parties may present and cross-examine witnesses and produce documents, but the number of witnesses, motions and other procedural matters may be limited by the chief administrator. The chief administrator shall issue a written decision within fifteen days of the level one hearing.

(4) An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

(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 private arbitration.

2. **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. The report of the mediation shall be documented in writing within fifteen days. Agreements are binding and enforceable in this state by a writ of mandamus.

3. **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
57 days of the written request and shall follow standard
58 mediation practices and any applicable board procedures.
59 Parties may be represented and shall have the authority to
60 resolve the dispute. The report of the mediation shall be
61 documented in writing within fifteen days. Agreements are
62 binding and enforceable in this state by a writ of mandamus.

63 (4) Private arbitration. -- The parties may agree, in
64 writing, to retain their choice of a private arbitrator and share
65 the cost. The arbitrator shall schedule the arbitration within
66 twenty days of the written request and shall follow standard
67 arbitration practices and any applicable board procedures.
68 The arbitrator shall render a decision in writing to all parties,
69 setting forth findings of fact and conclusions of law on the
70 issues submitted within thirty days following the arbitration.
71 An arbitration decision is binding and enforceable in this
72 state by a writ of mandamus. The arbitrator shall inform the
73 board, in writing, of the decision within ten days.

74 (c) Level three hearing. --

75 (1) Within ten days of receiving a written report stating
76 that level two was unsuccessful, the grievant may file a
77 written appeal with the employer and the board requesting a
78 level three hearing on the grievance. State government
79 employees shall further file a copy of the grievance with the
80 Director of the Division of Personnel.

81 (2) The administrative law judge shall conduct all
82 proceedings in an impartial manner and shall ensure that all
83 parties are accorded procedural and substantive due process.

84 (3) The administrative law judge shall schedule the level
85 three hearing and any other proceedings or deadlines within
86 a reasonable time in consultation with the parties. The
87 location of the hearing and whether the hearing is to be made
88 public are at the discretion of the administrative law judge.
89 (4) The administrative law judge may issue subpoenas for
90 witnesses, limit witnesses, administer oaths and exercise
91 other powers granted by rule or law.

92 (5) Within thirty days following the hearing or the receipt
93 of the proposed findings of fact and conclusions of law, the
94 administrative law judge shall render a decision in writing to
95 all parties setting forth findings of fact and conclusions of
96 law on the issues submitted.

97 (6) 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.

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CHAPTER 176

(Com. Sub. for H.B. 4094 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §6C-4-1, §6C-4-2
and §6C-4-3, all relating to reimbursement of compensation
paid to certain state employees for training, education and
professional development; defining terms; requiring division of
personnel propose rules for legislative approval; and setting
forth exemptions.

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 §6C-4-1, §6C-4-2 and §6C-4-3, all to read as follows:

ARTICLE 4. COMPENSATION TO STATE EMPLOYEES FOR TRAINING, EDUCATION AND PROFESSIONAL DEVELOPMENT.

§6C-4-1. Definitions.
§6C-4-2. Agreement to reimburse state agencies for training compensation paid to employees; rule-authority.
§6C-4-3. Exemptions.

§6C-4-1. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “Advanced professional development training” means any academy, class, conference, course, program, seminar or training attended by an employee that:

(1) Is not required by his or her current position;

(2) Is not required for the performance of his or her current job responsibilities; and

(3) Is intended to develop a higher level of skill, to develop an increase in professional or technical knowledge, or to obtain an advanced level of professional accreditation.

“Advanced professional development training” does not include routine job training, training required for the employee’s performance of his or her current job responsibilities, attendance at professional conventions, seminars, continuing professional education or any form of training required to renew an employee’s professional
accréditation or any training costing less than one thousand dollars.

(b) “Agency” means an administrative unit of state government, including, without limitation, any authority, board, bureau, commission, committee, council, division, section, or office within the executive branch of state government.

(c) “Continuing professional education” means educational courses, seminars, lectures or programs necessary to maintain or renew an employee’s professional accreditation.

d) “Employee” means any person who performs a full or part-time service for wages, salary, or other remuneration under a contract for hire, written or oral, express or implied, for an agency and receives advanced professional development training after the effective date of this article.

e) “Professional accreditation” means any certification, degree, advanced degree, endorsement or occupational license.

(f) “Training compensation” means tuition and expenses, paid to an or on the behalf of an employee for advanced professional development training.

§6C-4-2. Agreements to reimburse state agencies for training compensation paid to employees; rule-authority.

(a) Notwithstanding any other provision of this code to the contrary, an agency may require an employee to enter into a written reimbursement agreement to repay training compensation.
(b) If an employee voluntarily leaves employment with the agency within one year after receiving advanced professional development training and becomes employed within one year with an entity other than the State of West Virginia, in a capacity which utilizes the advanced professional development training, the employee shall repay a pro rata portion of the training compensation as provided in the reimbursement agreement.

(c) The Division of Personnel shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to set forth a standard reimbursement agreement form which provides the following minimum requirements:

1. Providing general contract language including terms and conditions of repayment;
2. Specifying types of advanced professional development training;
3. Requiring service no longer than one year;
4. Permitting and describing the circumstances when an agency may withhold prorated amounts from any final payments due and owing to the employee; and
5. Providing exceptions for an employee who becomes injured or ill and can no longer perform his or her assigned job functions.

§6C-4-3. Exemptions.

(a) The provisions of this article do not apply to:

1. Training offered to a member of the West Virginia State Police during his or her participation in the West
Virginia State Police Cadet Training Program in accordance with the provisions of subsection (i), section five, article two, chapter fifteen of this code;

(2) A member of the West Virginia National Guard; and

(3) Employees of the Legislature, the Supreme Court of Appeals, the Attorney General, the Secretary of State, the Auditor, the Treasurer and the Commissioner of Agriculture.

CHAPTER 177

(Com. Sub. for H.B. 4328 - By Delegates Caputo, Webster, Brown, Doyle, Ellem, Fleischauer, Hamilton, Mahan, Miley, Moore and Varner)

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §29-6-20 of the Code of West Virginia, 1931, as amended, relating to allowing state employees to serve as poll workers and as delegates to state and national political conventions without being considered as engaging in a prohibited political activity.

Be it enacted by the Legislature of West Virginia:

That §29-6-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.
§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his or her political or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

(d) No employee in the classified service or member of the board or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:
30 (1) Use his or her official authority or influence for the
31 purpose of interfering with or affecting the result of an
32 election or a nomination for office;
33
34 (2) Directly or indirectly coerce, attempt to coerce,
35 command or advise a state or local officer or employee to
36 pay, lend or contribute anything of value to a party,
37 committee, organization, agency or person for political
38 purposes; or
39
40 (3) Be a candidate for any national or state paid public
41 office or court of record; or hold any paid public office other
42 than as a paid poll clerk or worker; or be a member of any
43 national, state or local committee of a political party, or a
44 financial agent or treasurer within the meaning of the
45 provisions of section three, four or five-e, article eight,
46 chapter three of this code. Other types of partisan or
47 nonpartisan political campaigning and management not
48 inconsistent with the provisions of this subdivision and with
49 the provisions of subsection (d) of this section shall be
50 permitted.
51
52 (f) Political participation pertaining to constitutional
53 amendments, referendums, approval of municipal ordinances
54 or activities, serving as a poll clerk or worker or being a
55 candidate for or serving as a delegate to any state or national
56 political party convention shall not be deemed to be
57 prohibited by the foregoing provisions of this section.
58
59 (g) Any classified employee who becomes a candidate for
60 any paid public office as permitted by this section shall be
61 placed on a leave of absence without pay for the period of
62 such candidacy, commencing upon the filing of the certificate
63 of candidacy.
AN ACT to amend and reenact §5-16-18 of the Code of West Virginia, 1931, as amended, relating to authorizing the Public Employees Insurance Agency to charge interest to employers on amounts not paid timely.

Be it enacted by the Legislature of West Virginia:

That §5-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

(a) All employers operating from state general revenue or special revenue funds or federal funds or any combination of those funds shall budget the cost of insurance coverage provided by the Public Employees Insurance Agency to current and retired employees of the employer as a separate line item, titled “PEIA”, in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge
General Revenue Funds for insurance benefits for retirees under section thirteen of this article shall provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with General Revenue Funds for twelve months prior to retirement.

(b) If the general revenue appropriation for any employer, excluding county boards of education, is insufficient to cover the cost of insurance coverage for the employer’s participating employees, retired employees and surviving dependents, the employer shall pay the remainder of the cost from its "personal services" or "unclassified" line items. The amount of the payments for county boards of education shall be determined by the method set forth in section twenty-four, article nine-a, chapter eighteen of this code: Provided, That local excess levy funds shall be used only for the purposes for which they were raised: Provided, however, That after approval of its annual financial plan, but in no event later than the thirty-first day of December of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education shall pay for covered employees during the following fiscal year.

(c) All other employers not operating from the state General Revenue Fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers’ share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

(d) The contribution of the other employers (namely: 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 for their employees shall be the
percentage of the cost of the employees’ insurance package
as the employers determine reasonable and proper under their
own particular circumstances.

(e) The employee’s proportionate share of the premium
or cost shall be withheld or deducted by the employer from
the employee’s salary or wages as and when paid and the
sums shall be forwarded to the director with any supporting
data as the director may require.

(f) All moneys received by the Public Employees
Insurance Agency shall be deposited in a special fund or
funds as are necessary in the State Treasury and the Treasurer
of the state is custodian of the fund or funds and shall
administer the fund or funds in accordance with the
provisions of this article or as the director may from time to
time direct. The Treasurer shall pay all warrants issued by
the State Auditor against the fund or funds as the director
may direct in accordance with the provisions of this article.
All funds received by the agency, including, but not limited
to, basic insurance premiums, administrative expenses and
optional life insurance premiums, shall be deposited, as
determined by the director, in any of the investment pools
with the West Virginia Investment Management Board,
including, but not limited to, the equity and fixed income
pools, with the interest income or other earnings a proper
credit to all such funds for the benefit of the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency may recover an additional interest amount from any employer that fails to pay in a timely manner any premium or minimum annual employer payment, as defined in article sixteen-d of this chapter, which is due and payable to the Public Employees Insurance Agency or the Retiree Health Benefit Trust. The agency may recover the amount due plus an additional amount equal to two and one half percent per annum of the amount due. Accrual of interest owed by the delinquent employer commences upon the thirty-first day following the due date for the amount owed and shall continue until receipt by the Public Employees Insurance Agency of the delinquent payment. Interest shall compound every thirty days.

CHAPTER 179

(H.B. 4676 - By Delegates Kominar, laquinta and Perdue)

[Passed February 29, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §11B-2-15 of the Code of West Virginia, 1931, as amended, relating to continuing the permissible annual appropriation of Public Employees Insurance Reserve Fund moneys for the bureau for medical services of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:
That §11B-2-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15. Reserves for public employees insurance program.

(a) There is hereby continued a special revenue account in the State Treasury, designated the "Public Employees Insurance Reserve Fund", which is an interest-bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund.

(b) The fund shall consist of moneys appropriated by the Legislature and moneys transferred annually pursuant to the provisions of subsection (c) of this section. These moneys shall be held in reserve and appropriated by the Legislature only for the support of the programs provided by the Public Employees Insurance Agency. Provided, That the moneys held in the fund may be appropriated to the bureau for medical services of the Department of Health and Human Resources.

(c) Annually each state agency, except for the higher education central office created in article four, chapter eighteen-b of this code; the higher education governing boards as defined in articles two and three of said chapter; and the state institutions of higher education as defined in section two, article one of said chapter shall transfer one percent of its annualized expenditures from state funds, excluding federal funds based on filled full-time equivalents as determined by the state budget office as of the first day of April for that fiscal year, to the Public Employees Insurance Reserve Fund. The secretary may exempt that transfer only upon a showing by the requesting agency that the continued operation of that agency is dependent upon receipt of the exemption.
(d) Annually the secretary shall provide a report to the Governor and the Legislature on the amount of reserves established pursuant to the provisions of this section, the number of exemptions granted and the agencies receiving those exemptions.

CHAPTER 180

(Com. Sub. for H.B. 4692 - By Delegates White and Kominar)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §12-1-4 and §12-1-5 of the Code of West Virginia, 1931, as amended, all relating to giving depositories of state moneys authority to place deposits of those moneys in certificates of deposit which meet certain requirements in lieu of providing a bond or security; and permitting depositories of state moneys to insure such deposits in excess of the amount insured by an agency of the federal government with a deposit guaranty bond issued by a bankers surety company.

Be it enacted by the Legislature of West Virginia:

That §12-1-4 and §12-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-4. Bonds to be given by depositories.
§12-1-5. Limitation on amount of deposits.

§12-1-4. Bonds to be given by depositories.
(a) Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government or insured by a deposit guaranty bond issued by a valid bankers surety company acceptable to the treasurer, the State Treasurer shall require the depository to give a collaterally secured bond, in the amount of not less than ten thousand dollars, payable to the State of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with that depository, or of any accrued interest on deposits. The bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the State Treasurer. The collateral security for the bond shall consist of bonds of the United States, or bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the State of West Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or securities approved by the treasurer. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of the bond may be permitted with the approval in writing of the treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence of the execution and contents of the bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the State of West Virginia and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of the securities by the treasurer or any of his or her employees, and for the loss thereof due to his or her negligence or the negligence of his or her employees; and the securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The
treasurer may permit the deposit under proper receipt of the securities with one or more banking institutions within or outside the State of West Virginia and may contract with any institution for safekeeping and exchange of any collateral securities and may prescribe the rules for handling and protecting the collateral securities.

(b) A banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the treasurer; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the state; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the state with respect to such certificates of deposit issued for the state’s account; and (5) at the same time that the state’s funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the state through the selected depository.

§12-1-5. Limitation on amount of deposits.

The amount of state funds on deposit in any depository in excess of either the amount insured by an agency of the federal government or the amount insured by a deposit guaranty bond issued by a valid bankers surety company acceptable to the treasurer shall not exceed ninety percent of the value of collateral pledged on the collaterally secured bond given by the depository. The value of the collateral shall be determined by the treasurer.
AN ACT to amend and reenact §12-1A-1, §12-1A-3, §12-1A-4, §12-1A-5, §12-1A-6 and §12-1A-9 of the Code of West Virginia, 1931, as amended, all relating to the renewal of the West Virginia Small Business Linked Deposit Program.

Be it enacted by the Legislature of West Virginia:

That §12-1A-1, §12-1A-3, §12-1A-4, §12-1A-5, §12-1A-6 and §12-1A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.
§12-1A-3. Limitations on investment in linked deposit.
§12-1A-4. Application for loan priority; loan package; counseling.
§12-1A-5. Acceptance or rejection of loan package; deposit agreement for linked deposits.
§12-1A-6. Certification and monitoring of compliance; accountability and reporting.
§12-1A-9. Effective dates.

§12-1A-1. Definitions.

(a) "Treasurer" means the West Virginia Treasurer’s Office.
(b) “Eligible small business” means any business that:
(1) Employs fifty or fewer employees and has gross annual receipts of five million dollars or less; (2) is headquartered in this state; (3) is organized for profit; and (4) complies with the terms and conditions of this article regarding eligibility.

(c) “Eligible lending institution” means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to participate in the linked deposit program and comply with its terms and conditions.

(d) “Linked deposit” means a deposit placed by the Treasurer with an eligible lending institution that agrees to lend a linked deposit loan to an eligible small business. The amount of the deposit is equal to the amount of the linked deposit loan at an interest rate of three percent below the current market rate as determined and calculated by the Treasurer, but in no event may the interest rate on the deposit be less than zero percent. The linked deposit may be placed with the eligible lending institution for up to seven years depending upon whether the small business remains eligible for the program. On an annual date, as determined by the Treasurer, the rate paid to the Treasurer shall be recomputed based upon the current market rate. If the rate is recomputed, the amount of the deposit shall be reduced by the amount of principal paid on the outstanding loan.

(e) “Linked deposit loan” means a loan between an eligible lending institution and an eligible small business for an amount not to exceed two hundred fifty thousand dollars at a rate of not more than one percent above the prime interest rate as published by the Wall Street Journal on the date the Treasurer receives the linked deposit request. In exchange for providing this reduced rate loan, the eligible lending institution receives a linked deposit. On an annual date, as determined by the Treasurer, the rate charged to the
eligible small business may be recomputed but shall not exceed the prime interest rate plus one percent. If the rate is recomputed, the amount of the deposit shall be reduced by the amount of principal paid on the outstanding loan. The linked deposit loan may be part of a comprehensive loan package, including guaranteed loans by the United States small business administration, or other federal or state agency providing a partial or full guarantee against loss to the eligible lending institution.

(f) "Small Business Development Center" means the West Virginia Small Business Development Center, a division of the West Virginia Development Office.

§12-1A-3. Limitations on investment in linked deposits.

The Treasurer shall invest in linked deposits. The total amount deposited at any one time shall not exceed, in the aggregate, twenty million dollars. When deciding how much to invest in linked deposits, the Treasurer shall give priority to the investment, liquidity and cash flow needs of the state.

§12-1A-4. Applications for loan priority; loan package; counseling.

(a) An eligible lending institution that desires to participate in the linked deposit program shall accept and review loan applications from eligible small businesses that have been prepared with the advice of the Small Business Development Center. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible small business and whether the loan application meets the criteria established in this article.

(b) An eligible small business shall certify on its loan application that: (1) The small business is in good standing with the State Tax Division, the Workers' Compensation Commission and the Bureau of Employment Programs as of
the date of the application; (2) the linked deposit loan will be
used to create new jobs or preserve existing jobs and
employment opportunities; and (3) the linked deposit loan
shall not be used to refinance an existing debt.

(c) In considering which eligible small businesses should
receive linked deposit loans, the eligible lending institution
shall give priority to the economic needs of the area in which
the business is located, the number of jobs to be created and
preserved by the receipt of the loan, the reasonable ability of
the small business to repay the loan and other factors
considered appropriate by the eligible financial institution.

(d) A small business receiving a linked deposit loan shall
receive supervision and counseling provided by the small
business development center when applying for the loan. The
services available from the Small Business Development
Center include eligibility certification, business planning,
quarterly financial statement review and loan application
assistance. The State Tax Division, the Bureau of
Employment Programs and the Workers’ Compensation
Commission shall provide the Small Business Development
Center with information as to the standing of each small
business loan applicant. The Small Business Development
Center shall include these certifications with the loan
application.

(e) After all approvals of the Small Business
Development Center and the financial institution have been
given for a linked deposit loan, the Small Business
Development Center and the financial institution shall
forward to the Treasurer a linked deposit loan request in the
form and manner prescribed by the Treasurer. The Treasurer
shall notify the Small Business Development Center when
the linked deposit is made.

§12-1A-5. Acceptance or rejection of loan package; deposit
agreement for linked deposits.
(a) The Treasurer may accept or reject a linked deposit loan request or any portion of a request based on the criteria prescribed by this article.

(b) Upon approving the linked deposit loan request, the Treasurer shall place a linked deposit with the lending institution.

(c) The eligible lending institution shall enter into a deposit agreement with the Treasurer in a form prescribed by the Treasurer and in compliance with the requirements of this article.

§12-1A-6. Certification and monitoring of compliance; accountability and reporting.

(a) Upon the placement of a linked deposit with an eligible lending institution, the institution shall lend the funds to the approved eligible small business listed in the linked deposit loan package. A certification of compliance with this section shall be sent to the Small Business Development Center by the eligible lending institution.

(b) As a condition of remaining in good standing with the lending institution and the state and as a condition of having the loan for up to seven years, the loan recipient shall receive supervision and counseling provided by the Small Business Development Center. Eligible small businesses shall also grant the lending institution the right to provide information on the status of the loan to the Small Business Development Center so as to assist the small business.

(c) The Small Business Development Center shall take any and all steps necessary to implement, advertise and monitor compliance with the linked deposit program.

(d) By the thirty-first day of January of each year, the Small Business Development Center shall report on the
linked deposit program for the preceding calendar year to the West Virginia Development Office, which shall then report to the Joint Committee on Government and Finance. The reports shall set forth the name of the small business, terms, delinquency and default rates, job growth, gross income evaluation and amounts of the loans upon which the linked deposits were based.

§12-1A-9. Effective dates.

This article shall be effective from the amendment and reenactment of this article during the regular session of the Legislature in two thousand eight, through the first day of July, two thousand thirteen.
That §12-3A-2 and §12-3A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §12-3A-7, all to read as follows:

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-7. Method of sale or disposal of personal property.


As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “Document” means any authentication, certificate, claim, form, invoice, record, report, requisition, security, statement or other similar item that may be in a tangible or electronic form.

(b) “Electronic" means electrical, digital, magnetic, wireless, optical, electromagnetic, biometric, or any other technology that is similar to these technologies.

(c) "Electronic commerce" means using electronic techniques for accomplishing business transactions, including electronic mail or messaging, electronic bulletin board, Internet technology, electronic funds transfers, electronic data interchange (EDI) techniques, and any other related electronic technologies.

(d) "Security procedure" means a methodology or procedure for the purpose of:

(1) Preventing access by unauthorized parties;
(2) Verifying that an electronic record or electronic signature is that of a specific party or created by a specific electronic point of origin; or

(3) Detecting error or alteration in the communication, content, or storage of an electronic record since a specific point in time.

(e) "WEB commerce" means electronic commerce on the Internet.


(a) The State Auditor and the State Treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The State Treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the State Auditor or State Treasurer.

(b) A document or a signature received, issued or used by the Auditor or the Treasurer shall be considered an original and may not be denied legal effect on the ground that it is in electronic form.

(c) The Auditor or Treasurer may, in his or her discretion, require documents filed with or submitted to his or her respective office be filed or submitted in a prescribed electronic format.

(d) The Auditor or Treasurer, in his or her discretion, may waive:

(1) Any requirements for a document filed or submitted in an electronic format; or
(2) Any requirements for the certification, notarization or verification of a document filed or submitted in an electronic format.

(e) The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality, and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.

§12-3A-7. Method of sale or disposal of personal property.

1 (a) Notwithstanding any other provision in this code to the contrary, the Treasurer, or any other state spending unit that has the authority to sell or dispose of personal property in its possession, may do so by using electronic commerce.

(b) The sale of property by the Treasurer, or other state spending unit, by using electronic commerce is, for all purposes, deemed a sale of personal property within the State of West Virginia.

CHAPTER 183

(Com. Sub. for H.B. 4287 - By Delegates White, Swartzmiller, Yost, Stalnaker, Kominar, Varner, Manchin, Palumbo, Pino, Caputo and Browning)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §12-6-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §12-6C-6 of said code, all relating to clarifying that the funds, pools and securities maintained or invested in by the West
Virginia Investment Management Board and the West Virginia Board of Treasury Investments are authorized investments for all local government funds.

Be it enacted by the Legislature of West Virginia:

That §12-6-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §12-6C-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-8. Investment funds established; management thereof.

(a) There is continued a special investment fund designated as the Consolidated Fund. Effective the thirtieth day of June, two thousand five, the power and authority of the board as to the consolidated fund terminates. On the first day of July, two thousand five, the board shall transfer the consolidated fund, all moneys, obligations, assets, securities and other investments of the consolidated fund and all records, properties and any other document or item pertaining to the consolidated fund in its possession or under its control to the West Virginia Board of Treasury Investments established in article six-c of this chapter.

(b) Each board, commission, department, official or agency charged with the administration of state funds may request the State Treasurer to make moneys available to the board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer may enter into
agreements with the State Treasurer for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with a state spending unit from which it receives funds to request transfer of the funds to their investment account with the Investment Management Board or the West Virginia Board of Treasury Investments.

(d) Moneys held in the various funds and accounts administered by the board shall be invested as permitted by this article and subject to the restrictions contained in this article. The board shall report the earnings on the various funds under management to the State Treasurer at the times determined by the State Treasurer. The board shall also establish rules for the administration of the various funds and accounts established by this section as it considers necessary for the administration of the funds and accounts, including, but not limited to: (1) The specification of amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; and (2) creation of reserves for losses: Provided, That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the board may create special accounts and may administer and invest those moneys in accordance with the restrictions specially applicable to those moneys.

(e) Notwithstanding any provision of this code to the contrary, the funds, pools and securities maintained or invested in by the board in accordance with this article are authorized investments for all local government funds.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-6. Consolidated fund continued; management.
(a) The consolidated fund is continued and notwithstanding any provision of this code to the contrary is vested in the West Virginia Board of Treasury Investments on the first day of July, two thousand five.

(b) Each spending unit authorized to invest moneys shall unless prohibited by law, request the State Treasurer to invest its moneys. Based upon spending unit representations, the State Treasurer shall send the moneys to the West Virginia Board of Treasury Investments or to the Investment Management Board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer may enter into agreements with the State Treasurer for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with the state spending unit from which it receives moneys to allow the board to invest the moneys.

(d) Moneys held in the various funds and accounts administered by the board are invested as permitted by this article and subject to the restrictions contained in this article.

(e) The State Treasurer shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds, pools and accounts. The board shall report the earnings on the funds, pools, and accounts under management to the State Treasurer at the times determined by the State Treasurer.

(f) The board shall establish policies for the administration of the various funds, pools and accounts authorized by this article as it determines necessary. The policies may specify the minimum amounts and timing of deposits and withdrawals and any other matters authorized by the board.
33 (g) Notwithstanding any provision of this code to the contrary, the funds, pools and securities maintained or invested in by the board in accordance with this article are authorized investments for all local government funds.

CHAPTER 184

(Com. Sub. for H.B. 4476 - By Delegates Hrutkay, Tucker, Martin, Swartzmiller, D. Poling, Stalnaker and Craig)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-27-1, §17-27-2, §17-27-3, §17-27-4, §17-27-5, §17-27-6, §17-27-7, §17-27-8, §17-27-9, §17-27-10, §17-27-11, §17-27-12, §17-27-13, §17-27-14, §17-27-15, §17-27-16, §17-27-17 and §17-27-18, all relating to establishment of the Public-Private Transportation Facilities Act; setting forth legislative findings and purposes; defining terms; providing prerequisites for acquiring, constructing or improving of a transportation facility; creating public-private transportation oversight within the Division of Highways; creating the powers and duties of the division and any other agencies that are part of the department; providing for the submission of proposals and approval by the division; providing for service contracts; providing for the dedication of public property; setting forth the powers and duties of a developer; requiring a comprehensive agreement; requiring that comprehensive agreement be adopted by the Legislature by concurrent resolution; requiring yeas and nays to be entered in journal; providing for federal, state and local assistance; addressing the issues of material default and
remedies; prohibiting governmental entities from pledging full faith and credit; providing for the exercise of condemnation; addressing utility crossings and relocations; addressing dedication of assets; qualifying transportation facilities as public improvements; providing for an exemption of qualifying transportation facilities from taxation; addressing liberal construction and application of article; and requiring approval of Governor.

Be it enacted by the Legislature of West Virginia:


ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-1. Legislative findings and purposes.
§17-27-3. Prerequisites for development.
§17-27-4. Powers and duties of the division and other agencies that are part of the department.
§17-27-5. Submission and review of conceptual proposal; approval by the Commissioner of Highways.
§17-27-12. Governmental entities prohibited from pledging full faith and credit.
§17-27-16. Qualifying a transportation facility as a public improvement.
§17-27-17. Exemptions from taxation.
§17-27-1. Legislative findings and purposes.

The Legislature finds and declares:

1. That there is a public need for timely acquisition or construction of and improvements to transportation facilities within the state that are compatible with state and local transportation plans;

2. That public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved;

3. That authorizing private entities to acquire, construct or improve one or more transportation facilities may result in the availability of transportation facilities to the public in a more timely or less costly manner, thereby serving the public health, safety, convenience and welfare and the enhancement of the residential, agricultural, recreational, economic, commercial and industrial opportunities;

4. That providing a mechanism for the solicitation, receipt and consideration of proposals submitted by private entities for the purposes described in this section serves the public purpose of this article to the extent that the action facilitates the timely acquisition or construction of or improvement to a qualifying transportation facility or the continued operation of a qualifying transportation facility; and

5. That providing for the expansion and acceleration of transportation financing using innovative financing mechanisms, including, but not limited to, design-build contracting and financing arrangements, will add to the convenience of the public and allow public and private entities to have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this article.

1 As used in this article, the following words and terms have the following meanings:

3 (1) “Comprehensive agreement” means the comprehensive agreement by and between a developer and the division required by section nine of this article.

6 (2) “Department” means the Department of Transportation.

8 (3) “Developer” means the private entity that is responsible for the acquisition, construction or improvement of a qualifying transportation facility.

11 (4) “Division” means the Division of Highways.

12 (5) “Material default” means any default by the developer in the performance of its duties under subsection (f), section eight of this article that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the division has provided notice to the developer and a reasonable cure period has elapsed.

18 (6) “Private entity” means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity.

21 (7) “Public entity” means the State of West Virginia or any political subdivision thereof.

23 (8) “Qualifying transportation facility” means one or more transportation facilities acquired, constructed or improved by a private entity pursuant to this article.

26 (9) “Revenues” mean the user fees or service payments generated by a qualifying transportation facility.
(10) “Service contract” means a contract entered into between a public entity and a developer pursuant to section six of this article.

(11) “Service payments” mean payments to the developer of a qualifying transportation facility pursuant to a service contract.

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

(13) “Transportation facility” means any public inland waterway port facility, road, bridge, tunnel, overpass or existing airport used for the transportation of persons or goods, and the structures, equipment, facilities or improvements necessary or incident thereto.

(14) “User fees” mean the rates, tolls, fees or other charges imposed by the developer of a qualifying transportation facility for use of all or a portion of the qualifying transportation facility pursuant to the comprehensive agreement.

§17-27-3. Prerequisites for development.

Any private entity seeking authorization under this article to acquire, construct or improve a transportation facility shall first submit a conceptual proposal as set forth in section five of this article: Provided, That notwithstanding any provision of this code to the contrary, the division has no duty to accept, consider or review a conceptual proposal that is not solicited by the division. The private entity may initiate the approval process pursuant to subsections (a) and (b) of said section or the division may alternatively request proposals pursuant to subsection (c) of said section.

§17-27-4. Powers and duties of the division and other agencies that are part of the department.
In addition to the powers and duties set forth elsewhere in this code, the division and any other agency that is part of the department may:

1. Undertake one level of review for each proposal submitted by a private entity in accordance with this article. The review shall consist of the review by the division of the conceptual proposal: Provided, That expenses of the division incurred for review of proposal shall be paid by the private entity submitting the proposal. The division shall take into account at all times the needs and funding capabilities of the state as a whole in terms of transportation;

2. Enter into agreements, contracts or other transactions with any agency that is part of the department, any federal, state, county, municipal agency or private entity;

3. Act on behalf of the state and represent the state in the planning, financing, development and construction of any transportation facility for which solicited proposals have been received in accordance with the provisions of this article, with the concurrence of the affected public entity. Other public entities in this state shall cooperate to the fullest extent with what the division considers appropriate to effectuate the duties of the division;

4. Exempt from disclosure any sensitive business, commercial or financial information that is not customarily provided to business competitors that is submitted to the division for final review and approval;

5. Exempt from disclosure any documents, communications or information described in this section including, but not limited to, the project's design, management, financing and other details in accordance with the provisions of article one, chapter twenty-nine-b of this code; and
(6) Do any and all things necessary to carry out and accomplish the purposes of this article.

§17-27-5. Submission and review of conceptual proposals; approval by the Commissioner of Highways.

(a) A private entity may submit in writing a solicited conceptual proposal for a transportation facility to the division for consideration. The conceptual proposal shall include the following:

1. A statement of the private entity's qualifications and experience;

2. A description of the proposed transportation facility;

3. A description of the financing for the transportation facility; and

4. A statement setting forth the degree of public support for the proposed transportation facility, including a statement of the benefits of the proposed transportation facility to the public and its compatibility with existing transportation facilities.

(b) Following review by the division, the division shall submit to the Commissioner of Highways the conceptual proposals and priority ranking for review for final selection.

(c) The conceptual proposal shall be accompanied by the following material and information unless waived by the division with respect to the transportation facility or facilities that the private entity proposes to develop as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;
(2) A description of the transportation facility or facilities, including the conceptual design of the facility or facilities and all proposed interconnections with other transportation facilities;

(3) The projected total life-cycle cost of the transportation facility or facilities and the proposed date for acquisition of or the beginning of construction of, or improvements to, the transportation facility or facilities;

(4) A statement setting forth the method by which the developer proposes to secure all property interests required for the transportation facility or facilities: Provided, That with the approval of the division, the private entity may request that the comprehensive agreement assign the division with responsibility for securing all property interests, including public utility facilities, with all costs, including costs of acquiring the property, to be reimbursed to the division by the private entity. The statement shall include the following information regarding the property interests or rights, including, but not limited to, rights to extract mineable minerals:

(A) The names and addresses, if known, of the current owners of the property needed for the transportation facility or facilities;

(B) The nature of the property interests to be acquired;

(C) Any property that the division may expect to condemn; and

(D) The extent to which the property has been or will be subjected to the extraction of mineable minerals.

(5) Information relating to the current transportation plans, if any, of each affected local jurisdiction;
(6) A list of all permits and approvals required for acquisition or construction of or improvements to the transportation facility or facilities from local, state or federal agencies and a projected schedule for obtaining the permits and approvals: Provided, That the acquisition, construction, improvement or operation of a qualifying transportation facility that includes the extraction of mineable minerals is required to obtain all necessary permits or approvals from all applicable authorities in the same manner as if it were not a qualifying transportation facility under this article;

(7) A list of public utility facilities, if any, that will be crossed or affected by or as the result of the construction or improvement of the public port transportation facility or facilities and a statement of the plans of the developer to accommodate the crossings or relocations;

(8) A statement setting forth the developer's general plans for financing and operating the transportation facility or facilities;

(9) The names and addresses of the persons who may be contacted for further information concerning the request;

(10) Information about the developer, including, but not limited to, an organizational chart of the developer, capitalization of the developer, experience in the operation of transportation facilities and references and certificates of good standing from the Tax Commissioner, Insurance Commissioner and the Division of Unemployment Compensation evidencing that the developer is in good standing with state tax, workers’ compensation and unemployment compensation laws, respectively; and

(11) Any additional material and information requested by the Commissioner of Highways.
(d) The division, with approval of the Commissioner of Highways, may solicit proposals from private entities for the acquisition, construction or improvement of transportation facilities in a form and with the content determined by the division.

(e) The division may solicit any proposal for the acquisition, construction or improvement of the transportation facility or facilities as a qualifying transportation facility if it is determined that it serves the public purpose of this article. The division may determine that the acquisition, construction or improvement of the transportation facility or facilities as a qualifying transportation facility serves a public purpose if:

(1) There is a public need for the transportation facility of the type the private entity proposes to operate as a qualifying transportation facility;

(2) The transportation facility and the proposed interconnections with existing transportation facilities and the developer's plans for development of the qualifying transportation facility are reasonable and compatible with the state transportation plan and with the local comprehensive plan or plans;

(3) The estimated cost of the transportation facility or facilities is reasonable in relation to similar facilities;

(4) The acquisition, construction, improvement or the financing of the transportation facilities does not involve any moneys from the State Road Fund unless those moneys from the State Road Fund serve as a required match for federal funds specifically earmarked in a federal authorization or appropriation bill for a transportation facility to be acquired, constructed or equipped pursuant to this article: Provided, That the dedication of State Road Fund moneys in any fiscal year as state required match for the federal earmark does not
exceed four percent of the immediate preceding three fiscal
years average of division’s construction contracts awarded
under the competitive bid process: Provided, however, That
the moneys from the General Revenue Fund may also be
used if so designated and approved by the Legislature.

(5) The use of federal funds in connection with the
financing of a qualifying transportation facility has been
determined by the division to be compatible with the state
transportation plan and with the local comprehensive plan or
plans; and

(6) The private entity's plans will result in the timely
acquisition or construction of or improvements to the
transportation facility for their more efficient operation and
that the private entity's plans will result in a more timely and
economical delivery of the transportation facility than
otherwise available under existing delivery systems.

(f) Notwithstanding any provision of this article to the
contrary, the recommendation of the division to the
Commissioner of Highways is subject to:

(1) The private entity's entering into a comprehensive
agreement with the division; and

(2) With respect to transportation facilities, the
requirement that public information dissemination with
regard to any proposal under consideration comply with the
division's policy on the public involvement process, as
revised.

(g) In connection with its approval of the development of
the transportation facility as a qualifying transportation
facility, the division shall establish a date for the acquisition
of or the beginning of construction of or improvements to the
qualifying transportation facility. The division may extend
that date.
(h) Selection by the Commissioner of Highways.

(1) Upon presentations of proposals received by the division, the commissioner shall make his or her decision for the project.

(2) The commissioner shall notify the division and the public of the final selection for the project.


In addition to any authority otherwise conferred by law, any public entity may contract for services to be provided for a qualifying transportation facility in exchange for service payments and other consideration as the division determines appropriate.


Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds it will serve the public purpose of this article. In connection with the dedication, a public entity may convey any property interest that it has to the developer, by contract, for any consideration determined by the public entity. This consideration may include, without limitation, the agreement of the developer to develop the qualifying transportation facility. No real property may be dedicated by a public entity pursuant to this article unless all other public notice and comment requirements are met.


(a) The developer has all power allowed by law generally to a private entity having the same form of organization as the developer and may acquire, construct or improve the
qualifying transportation facility and impose user fees in connection with the use of the facility.

(b) The developer may own, lease or acquire any other right to facilitate the development of the qualifying transportation facility.

(c) Any financing of the qualifying transportation facility may be in the amounts and upon terms and conditions determined by the developer. The developer may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

(d) Subject to applicable permit requirements, the developer may cross any canal or navigable watercourse as long as the crossing does not unreasonably interfere with the current navigation and use of the waterway.

(e) In developing the qualifying transportation facility, the developer may:

(1) Make classifications according to reasonable categories for assessment of user fees; and

(2) With the consent of the division, make and enforce reasonable rules to the same extent that the division may make and enforce rules with respect to a similar transportation facility. The developer may, by agreement with appropriate law-enforcement agencies, arrange for video enforcement in connection with its toll collection activities.

(f) The developer shall:

(1) Acquire, construct or improve the qualifying transportation facility in a manner that meets the engineering standards of:
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(A) The authority for facilities operated and maintained by the division, in accordance with the provisions of the comprehensive agreement; and

(B) The division, in accordance with the provisions of the comprehensive agreement;

(2) Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees or service payments: Provided, That the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the division, to protect the safety of the public or for reasonable construction or maintenance procedures;

(3) Contract for the performance of all maintenance and operation of the transportation facility through the division, using its maintenance and operations practices, until the date of termination of the developer's duties as defined in the comprehensive agreement;

(4) Cooperate with the division in establishing any interconnection with the qualifying transportation facility requested by the division;

(5) Remain in compliance with state tax, workers’ compensation and unemployment compensation laws; and

(6) Comply with the provisions of the comprehensive agreement and any service contract.


(a) Prior to acquiring, constructing or improving the qualifying transportation facility, the developer shall enter into a comprehensive agreement with the division. The comprehensive agreement shall provide for:
(1) Delivery of performance or payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the division;

(2) Review and approval of the final plans and specifications for the qualifying transportation facility by the division;

(3) Inspection of the construction of or improvements to the qualifying transportation facility to ensure that they conform to the engineering standards acceptable to the division;

(4) Maintenance of a policy or policies of public liability insurance or self-insurance, in a form and amount satisfactory to the division and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility: Provided, That in no event may the insurance impose any pecuniary liability on the state, its agencies or any political subdivision of the state. Copies of the policies shall be filed with the division accompanied by proofs of coverage;

(5) Monitoring of the maintenance and operating practices of the developer by the division and the taking of any actions the division finds appropriate to ensure that the qualifying transportation facility is properly maintained and operated;

(6) Itemization and reimbursement to be paid to the division for the review and any services provided by the division;

(7) Filing of appropriate financial statements on a periodic basis;
(8) A reasonable maximum rate of return on investment for the developer;

(9) The date of termination of the developer's duties under this article and dedication to the division; and

(10) That a transportation facility shall accommodate all public utilities on a reasonable, nondiscriminatory and completely neutral basis and in compliance with the provisions of section seventeen-b, article four, chapter seventeen of this code.

(b) The comprehensive agreement may require user fees established by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the developer the rate of return on its investment specified in the comprehensive agreement: Provided, That the schedule and amount of the initial user fees to be imposed and any increase of the user fees must be approved by the Commissioner of the Division of Highways. A copy of any service contract shall be filed with the division. A schedule of the current user fees shall be made available by the developer to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not unreasonably discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment to the comprehensive agreement constitutes conclusive evidence that the user fees provided in the comprehensive agreement comply with this article. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

(c) In the comprehensive agreement, the division may agree to accept grants or loans from the developer, from time to time, from amounts received from the state or federal
government or any agency or instrumentality of the state or federal government.

(d) The comprehensive agreement shall incorporate the duties of the developer under this article and may contain any other terms and conditions that the division determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the division agrees to provide notice of default and cure rights for the benefit of the developer and the persons specified in the comprehensive agreement as providing financing for the qualifying transportation facility. The comprehensive agreement may contain any other lawful terms and conditions to which the developer and the division mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the developer to acquire, construct or improve one or more qualifying transportation facilities.

(e) The comprehensive agreement shall require the deposit of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement in the Economic Development Project Bridge Loan Fund established pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code.

(f) Any changes in the terms of the comprehensive agreement, agreed upon by the parties and subject to the requirements of subsection (h) of this section, shall be added to the comprehensive agreement by written amendment.

(g) Notwithstanding any provision of this article to the contrary, the division may not enter into any comprehensive agreements with a developer after the thirtieth day of June, two thousand thirteen.

(h) Notwithstanding any provision of this article to the contrary, the division may not enter into any comprehensive
agreements with a developer after the thirtieth day of June, two thousand thirteen.

(i) Notwithstanding any provision of this article to the contrary, the division may not enter into a comprehensive agreement until the comprehensive agreement has been approved by the Legislature by the adoption of a concurrent resolution: Provided, That all voting on the floor of both houses on the question of the adoption of any concurrent resolution approving a comprehensive agreement shall be by yeas and nays to be entered on the Journals. If the Legislature approves the comprehensive agreement, the division shall submit the comprehensive agreement to the Governor for his or her approval or disapproval.


The division may take any action to obtain federal, state or local assistance for a qualifying transportation facility that serves the public purpose of this article and may enter into any contracts required to receive federal assistance. The division may determine that it serves the public purpose of this article for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or federal government or any agency or instrumentality thereof.


(a) Except upon written agreement of the developer and any other parties identified in the comprehensive agreement, the division may exercise, at its discretion, any or all of the following remedies provided in this section or elsewhere in this article to remedy any material default that has occurred or may continue to occur.
(1) To elect to take over the transportation facility or facilities and in that case it shall succeed to all of the rights, title and interest in the transportation facility or facilities, subject to any liens on revenues previously granted by the developer to any person providing financing for the facility or facilities and the provisions of subsection (c) of this section;

(2) To exercise the power of condemnation to acquire the qualifying transportation facility or facilities. Any person who has provided financing for the qualifying transportation facility and the developer, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner;

(3) To terminate the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, subject only to the express limitations of the terms of the comprehensive agreement; and

(4) To make or cause to be made any appropriate claims under the performance or payment bonds required by this article.

(b) In the event the division elects to take over a qualifying transportation facility pursuant to subdivision (1), subsection (a) of this section, the division may acquire, construct or improve the transportation facility, impose user fees for the use of the transportation facility and comply with any service contracts as if it were the developer. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the developer's obligations to secured parties, including the maintenance of reserves and the liens shall be correspondingly reduced and, when paid off, released. Remaining revenues, if any, after all payments to, or for the benefit of, secured parties shall be
paid to the developer, subject to the negotiated maximum rate of return. The right to receive the payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the division may not be pledged to secure any financing of the developer by the election to take over the qualifying transportation facility. Assumption of development of the qualifying transportation facility does not obligate the division to pay any obligation of the developer from sources other than revenues.

§17-27-12. Governmental entities prohibited from pledging full faith and credit.

The full faith and credit of the state, or any county, municipality or political subdivision of the state may not be pledged to secure any financing of the developer in connection with the acquisition, construction or equipping of a qualifying transportation facility.


(a) At the request of the developer, the division may exercise the power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests in any lands or estates to the extent that the division finds that the action serves the public purpose of this article: Provided, That the power of condemnation may not be exercised if the extraction of mineable minerals is outside the defined one thousand foot corridor of the project or work which is the subject of a solicited conceptual proposal, comprehensive agreement or service contract submitted or entered into under the provisions of this article. Any amounts to be paid in any condemnation proceeding shall be paid by the developer.

(b) Until the division has provided written certification as to the existence of a material default under subsection (a),
section eleven of this article, the power of condemnation may not be exercised against a qualifying transportation facility.


The developer and each county, municipality, public service district, public utility, railroad and cable television provider whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any entity possessing the power of condemnation is expressly granted the powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that the moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which includes construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for the crossing, construction, moving or relocating of facilities shall be paid by the developer.


The division shall terminate the developer's authority and duties under this article on the date set forth in the comprehensive agreement. Upon termination, the division and duties of the developer under this article cease and the qualifying transportation facility shall be dedicated to the division for public use.

§17-27-16. Qualifying a transportation facility as a public improvement.

All qualifying transportation facilities authorized under this article are public improvements and are subject to article
five-a, chapter twenty-one of this code. Article twenty-two, chapter five of this code applies to all qualifying transportation facilities authorized under this article. All construction, reconstruction, repair or improvement of qualifying transportation facilities authorized under this article shall be awarded by competitive bidding. Competitive bids shall be solicited by the division for each construction contract in excess of twenty-five thousand dollars in total cost. Construction costs should be of sufficient size that the performance and payment bonds are in the ten million to thirty million dollar range, where possible. Competitive bids shall be solicited by the division through publication of a Class II legal advertisement, in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area is the county or municipality in which the transportation facility is to be located. The advertisement shall also be published as a Class II advertisement in a newspaper of general circulation published in the city of Charleston. The advertisement shall solicit sealed proposals for the construction of the transportation facility, stating the time and place for the opening of bids. All bids shall be publicly opened and read aloud. Construction contracts shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance or payment bond:

Provided, That both the division and the private entity have the right to reject all bids and solicit new bids for the construction contract. The provisions of article one-c, chapter twenty-one of this code apply to the construction of all qualifying transportation facilities approved under this article.

§17-27-17. Exemptions from taxation.

(a) The exercise of the powers granted in this article will be in all respects for the benefit of the people of this state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential,
agricultural, recreational, economic, commercial and industrial opportunities and is a public purpose. As the construction, acquisition, improvement, operation and maintenance of qualifying transportation facilities will constitute the performance of essential governmental functions, a developer is not required to pay any taxes or assessments upon any qualifying transportation facility or any property acquired or used by the developer under the provisions of this article or upon the income therefrom, other than taxes collected from the consumer pursuant to article fifteen, chapter eleven of this code.


The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in section one of this article.

CHAPTER 185

(Com. Sub. for H.B. 4121 - By Delegates Fragale, DeLong, Boggs, Barker and Eldridge)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto three new sections, designated §6-9-2a, §6-9-2b and §6-9-2c; to amend said code by adding thereto a new section, designated §7-5-7a; and to amend and reenact §8-12-5 of said code, all relating to authorizing the participation of local governments in a purchasing card program to be administered by the Auditor as chief inspector of public offices; authorizing
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Auditor to contract with institutions for provision of the cards; authorizing Auditor to propose rules; creating local Government Purchasing Card Expenditure Fund; use of moneys in fund; legislative appropriation of fund; and creating offenses and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto three new sections, designated §6-9-2a, §6-9-2b and §6-9-2c; that said code be amended by adding thereto a new section, designated §7-5-7a; and that §8-12-5 of said code be amended and reenacted, all to read as follows:

Chapter
  7. County Commissions and Officers.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISION OF PUBLIC OFFICERS.

§6-9-2b. Local Government Purchasing Card Expenditure Fund Created.
§6-9-2c. Fraudulent or unauthorized use of purchasing card prohibited; penalties.


1 Notwithstanding any provisions of the code to the contrary, the Auditor may authorize and administer a purchasing card program for local governments under the auspices of the chief inspector division. 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 and so that the accounting and reporting of such payments shall be uniform for all local governments utilizing the program. The program shall permit local
governments to use a purchase charge card to purchase goods and services. Notwithstanding any other code provisions to the contrary, local government purchases may be made with the purchase charge card for any payment authorized by the Auditor, including regular routine payments, travel and emergency payments, and shall be set at an amount to be determined by the Auditor: Provided, That 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, however, That purchasing cards may be used for cash advances for travel purchases upon approval of the Auditor. Selection of a charge card vendor to provide local government purchasing cards shall be based upon expressions of interest submitted by charge card vendors. The Auditor shall contract with the successful institution for provision of local government purchasing cards. The selection shall be based upon the combination of competence and qualification in the provision of services and a determination of the best financial arrangement for the program. The Auditor may propose rules for promulgation to govern the implementation of the local government purchase card program and may promulgate emergency rules for emergency payments to effectuate the provision of such services.

§6-9-2b. Local Government Purchasing Card Expenditure Fund Created.

There is hereby created a local Government Purchasing Card Expenditure Fund. Money received by the Auditor pursuant to an agreement with vendors providing local government purchasing charge cards and any interest or other return earned on the money shall be deposited in the special revenue revolving local Government Purchasing Card Expenditure 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 local government purchasing card program. The Auditor may also utilize the fund to provide a proportionate share of rebate back to the general fund of local governments based upon utilization of the program. 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 set forth in article two, chapter five-a of this code.

§6-9-2c. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

It is unlawful for any person to use a local government purchasing card, issued in accordance with the provisions of section two-a of this article, to make any purchase of goods or services in a manner which is contrary to the provisions of section two-a of this article or the rules promulgated pursuant to that section. Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one year nor more than five years, or fined no more than five thousand dollars, or both fined and imprisoned.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-7a. Authorization for Purchase Card utilization.

Notwithstanding any other code provision to the contrary, any county or county agency may participate in a purchasing card program for local governments authorized and administered by the State Auditor as an alternative payment method.
CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The Constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and maintain a passageway,
building or other structure overhanging or crossing any airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of the public hearing has been published as a Class I 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 municipality: Provided, That any permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to the municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the Division of Highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good
order, free and clean, by the owners or occupants thereof or
of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or
discontinue, bridges, tunnels and ferries and approaches
thereto;

(7) To provide for the construction and maintenance of
water drains, the drainage of swamps or marshlands and
drainage systems;

(8) To provide for the construction, maintenance and
covering over of watercourses;

(9) To control and administer the waterfront and
waterways of the municipality and to acquire, establish,
construct, operate and maintain and regulate flood control
works, wharves and public landings, warehouses and all
adjuncts and facilities for navigation and commerce and the
utilization of the waterfront and waterways and adjacent
property;

(10) To prohibit the accumulation and require the
disposal of garbage, refuse, debris, wastes, ashes, trash and
other similar accumulations whether on private or public
property: Provided, That, in the event the municipality
annexes an area which has been receiving solid waste
collection services from a certificated solid waste motor
carrier, the municipality and the solid waste motor carrier
may negotiate an agreement for continuation of the private
solid waste motor carrier services for a period of time, not to
exceed three years, during which time the certificated solid
waste motor carrier may continue to provide exclusive solid
waste collection services in the annexed territory;

(11) To construct, establish, acquire, equip, maintain and
operate incinerator plants and equipment and all other
facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for use or consumption, or which may be contaminated or otherwise unsanitary;

To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

To regulate the keeping of gunpowder and other combustibles;

To make regulations guarding against danger or damage by fire;

To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character;

To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;
(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the event that the municipality determines to license any business, the municipality has plenary power and authority and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of the businesses;
(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in articles nineteen and twenty), within or without the corporate
limits of the municipality, except that the municipality may
not erect any system partly without the corporate limits of the
municipality to serve persons already obtaining service from
an existing system of the character proposed and where the
system is by the municipality erected, or has heretofore been
so erected, partly within and partly without the corporate
limits of the municipality, the municipality has the right to
lay and collect charges for service rendered to those served
within and those served without the corporate limits of the
municipality and to prevent injury to the system or the
pollution of the water thereof and its maintenance in a
healthful condition for public use within the corporate limits
of the municipality;

(33) To acquire watersheds, water and riparian rights,
plant sites, rights-of-way and any and all other property and
appurtenances necessary, appropriate, useful, convenient or
incidental to any system, waterworks or sewage treatment
and disposal works, as aforesaid, subject to all of the
pertinent provisions of articles nineteen and twenty of this
chapter;

(34) To establish, construct, acquire, maintain and
operate and regulate markets and prescribe the time of
holding the same;

(35) To regulate and provide for the weighing of articles
sold or for sale;

(36) To establish, construct, acquire, maintain and
operate public buildings, municipal buildings or city halls,
auditoriums, arenas, jails, juvenile detention centers or
homes, motor vehicle parking lots or any other public works;

(37) To establish, construct, acquire, provide, equip,
maintain and operate recreational parks, playgrounds and
other recreational facilities for public use and in this
connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia Board of Health and State Bureau for Public Health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitarians and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect the authority, the governing body may acquire any cemetery or cemeteries already established;

(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety, health, welfare and good order;

(45) To adopt rules for the transaction of business and the government and regulation of its governing body;
(46) Except as otherwise provided, to require and take bonds from any officers, when considered necessary, payable to the municipality, in its corporate name, with such sureties and in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(47) To require and take from the employees and contractors such bonds in a penalty, with such sureties and with such conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may consider necessary or appropriate for the public interest;

(50) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes thereof as may be considered advisable;

(51) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: Provided, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.
(52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(53) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(54) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

(55) To provide revenue for the municipality and appropriate the same to its expenses;

(56) To create and maintain an Employee Benefits Fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(57) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for these purposes;

(58) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties may not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations; and
309 (59) To participate in a purchasing card program for local
governments authorized and administered by the State
Auditor as an alternative payment method.

CHAPTER 186

(S.B. 512 - By Senator Bowman)

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §5A-8-15 of the Code of West
Virginia, 1931, as amended, relating to changing the number of
members on the Records Management and Preservation Board
for county government entities from nine to eleven members to
accurately reflect the actual board membership.

Be it enacted by the Legislature of West Virginia:

That §5A-8-15 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND
PRESERVATION ACT.

§5A-8-15. Records management and preservation of county
records; alternate storage of county records; Records Management and Preservation Board;
qualifications and appointment of members; reimbursement of expenses; staffing; rule-
making authority; study of records management
needs of state agencies; grants to counties.
The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of a county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. A county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as proposed by the Records Management and Preservation Board.

(b) In the event a county government entity decides to destroy or otherwise dispose of a county record, the county government entity may, prior to destruction or disposal thereof, offer the record to the Director of the Section of Archives and History of the Division of Culture and History for preservation of the record as a document of historical value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c)(1) A preservation duplicate of a county government entity record may be stored in any format approved by the board in which the image of the original record is preserved in a form, including CD-ROM and optical image storage media, in which the image is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved that truly and accurately depicts the image of the original county government record.

(2) Except for those formats, processes and systems used for the storage of records on the effective date of this section,
no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the board in accordance with the provisions of chapter twenty-nine-a of this code. The board may prohibit the use of any format, process or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration or decay.

(3) Upon creation of a preservation duplicate that stores an original county government entity record in an approved format that is incapable of erasure or alteration and that may be retrieved in a format that truly and accurately depicts the image of the original record, the county government entity may destroy or otherwise dispose of the original in accordance with the provisions of section seven-c, article one, chapter fifty-seven of this code.

(d) A Records Management and Preservation Board for county government entities is continued to be composed of eleven members.

(1) Three members shall serve ex officio. One member shall be the Commissioner of the Division of Culture and History or designee who shall be the chair of the board. One member shall be the Administrator of the Supreme Court of Appeals or designee. One member shall be the Chief Technology Officer or designee.

(2) The Governor shall appoint eight members of the board, with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and not more than three members may be appointed from the same congressional district. Of the eight members appointed by the Governor:
(i) Five appointments shall be county elected officials, one of whom shall be a clerk of a county commission, one of whom shall be a circuit court clerk, one of whom shall be a county commissioner, one of whom shall be a county sheriff and one of whom shall be a county assessor, to be selected from a list of fifteen names. The names of three clerks of county commissions and three circuit court clerks shall be submitted to the Governor by the West Virginia Association of Counties. The names of three county commissioners shall be submitted to the Governor jointly by the West Virginia Association of Counties and the West Virginia County Commissioners Association. The names of three county sheriffs shall be submitted to the Governor by the West Virginia Sheriff’s Association. The names of three county assessors shall be submitted to the Governor by the Association of West Virginia Assessors;

(ii) One appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia Prosecuting Attorneys Institute;

(iii) One appointment shall be an attorney licensed in West Virginia and in good standing as a member of the West Virginia State Bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the State Bar; and

(iv) One appointment shall be a representative of a local historical or genealogical society.

(e) The members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.
(f) The staff of the board shall consist of the Director of the Archives and History Section of the Division of Culture and History and any additional staff as needed.

(g) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a system of records management and preservation for county governments: Provided, That, for the retention and disposition of records of courts of record and magistrate courts, the implementation of the rule is subject to action by the Supreme Court of Appeals of West Virginia. The proposed rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state. The board is not authorized to propose or promulgate emergency rules under the provisions of this section.

(h) In addition to the fees charged by the clerk of the county commission under the provisions of section ten, article one, chapter fifty-nine of this code, the clerk shall charge and collect an additional one-dollar fee for every document containing less than ten pages filed for recording and an additional one-dollar fee for each additional ten pages of document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the Public Records and Preservation Account as established in the State Treasury all fees collected: Provided, That the clerk may retain not more than ten percent of the fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the State Treasury of all fees collected by the clerk under the provisions of this section.

(i) There is hereby created in the State Treasury a special account entitled the Public Records and Preservation Revenue Account. The account shall consist of all fees collected under the provisions of this section, legislative
appropriations, interest earned from fees, investments, gifts, grants or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code.

(j) Subject to the above provision, the board may expend the funds in the account to implement the provisions of this article. In expending funds from the account, the board shall allocate not more than fifty percent of the funds for grants to counties for records management, access and preservation purposes. The board shall provide for applications, set guidelines and establish procedures for distributing grants to counties, including a process for appealing an adverse decision on a grant application. Expenditures from the account shall be for the purposes set forth in this section, including the cost of additional staff of the Division of Archives and History.

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CHAPTER 187

(Com. Sub. for H.B. 4082 - By Delegate Spencer)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §5-10-14, §5-10-15b and §5-10-27c of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; clarifying transfer of retroactive service credit in the Public Employees Retirement
System for certain members of the State Police Death, Disability and Retirement Fund; making technical changes by substituting the term “member” for “employee”; and permitting direct rollovers in any amount from the Public Employees Retirement System.

Be it enacted by the Legislature of West Virginia:

That §5-10-14, §5-10-15b and §5-10-27c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.
§5-10-15b. Credit for public employment in another state.
§5-10-27c. Direct rollovers.

§5-10-14. Service credit; retroactive provisions.

(a) The Board of Trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

(1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated...
so that any ten days, regardless of calendar month or year,
shall be calculated toward any award of one month of service
credit;

(2) Except for hourly employees, ten or more months of
service credit earned in any calendar year shall be credited as
a year of service: Provided, That no more than one year of
service may be credited to any member for all service
rendered by him or her in any calendar year and no days may
be carried over by a member from one calendar year to
another calendar year where the member has received a full-
year credit for that year; and

(3) Service may be credited to a member who was
employed by a political subdivision if his or her employment
occurred within a period of thirty years immediately
preceding the date the political subdivision became a
participating public employer.

(b) The Board of Trustees shall grant service credit to
employees of boards of health, the Clerk of the House of
Delegates and the Clerk of the State Senate or to any former
and present member of the State Teachers Retirement System
who have been contributing members for more than three
years, for service previously credited by the State Teachers
Retiremen: System and shall require the transfer of the
member's contributions to the system and shall also require
a deposit, with interest, of any withdrawals of contributions
any time prior to the member's retirement. Repayment of
withdrawals shall be as directed by the Board of Trustees.

(c) Court reporters who are acting in an official capacity,
although paid by funds other than the county commission or
State Auditor, may receive prior service credit for time
served in that capacity.

(d) Active members who previously worked in CETA
(Comprehensive Employment and Training Act) may receive
service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of March, two thousand three: And provided further, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(e)(1) Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. For purposes of this section, the term "regular session" means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. Employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular
sessions in seven consecutive calendar years, as certified by
the Clerk of the House in which the employee served, shall
receive service credit of six months for all regular sessions
served, as certified by the Clerk of the House in which the
employee served, or shall receive service credit of three
months for each regular thirty-day session served prior to one
thousand nine hundred seventy-one: Provided, That
employees of the State Legislature whose term of
employment is otherwise classified as temporary and who are
employed to perform services required by the Legislature for
its regular sessions and who have been or are employed
during the regular sessions in thirteen consecutive calendar
years as either temporary employees or full-time employees
or a combination thereof, as certified by the Clerk of the
House in which the employee served, shall receive a service
credit of twelve months for each regular session served, as
certified by the Clerk of the House in which the employee
served: Provided, however, That the amendments made to
this subsection during the two thousand two regular session
of the Legislature only apply to employees of the Legislature
who are employed by the Legislature as either temporary
employees or full-time employees as of the first day of
January, two thousand two, or who become employed by the
Legislature as temporary or full-time employees for the first
time after the first day of January, two thousand two.
Employees of the State Legislature whose terms of
employment are otherwise classified as temporary and who
are employed to perform services required by the Legislature
during the interim time between regular sessions shall receive
service credit of one month for each ten days served during
the interim between regular sessions, which interim days
shall be cumulatively calculated so that any ten days,
regardless of calendar month or year, shall be calculated
toward any award of one month of service credit: Provided
further, That no more than one year of service may be
credited to any temporary legislative employee for all service
rendered by that employee in any calendar year and no days
may be carried over by a temporary legislative employee
from one calendar year to another calendar year where the 
member has received a full year credit for that year. Service 
credit awarded for legislative employment pursuant to this 
section shall be used for the purpose of calculating that 
member's retirement annuity, pursuant to section twenty-two 
of this article, and determining eligibility as it relates to 
credited service, notwithstanding any other provision of this 
section. Certification of employment for a complete 
legislative session and for interim days shall be determined 
by the Clerk of the House in which the employee served, 
based upon employment records. Service of fifty-five days of 
a regular session constitutes an absolute presumption of 
service for a complete legislative session and service of 
twenty-seven days of a thirty-day regular session occurring 
prior to one thousand nine hundred seventy-one constitutes 
an absolute presumption of service for a complete legislative 
session. Once a legislative employee has been employed 
during regular sessions for seven consecutive years or has 
become a full-time employee of the Legislature, that 
employee shall receive the service credit provided in this 
section for all regular and interim sessions and interim days 
worked by that employee, as certified by the Clerk of the 
House in which the employee served, regardless of when the 
session or interim legislative employment occurred: And 
provided further, That regular session legislative employment 
for seven consecutive years may be served in either or both 
houses of the Legislature.

(2) For purposes of this section, employees of the Joint 
Committee on Government and Finance are entitled to the 
same benefits as employees of the House of Delegates or the 
Senate: Provided, That for joint committee employees whose 
terms of employment are otherwise classified as temporary, 
employment in preparation for regular sessions, certified by 
the legislative manager as required by the Legislature for its 
regular sessions, shall be considered the same as employment 
during regular sessions to meet service credit requirements 
for sessions served.
(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to the year one thousand nine hundred eighty-nine in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years for which he or she is purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive credit under this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, two thousand eight, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked, three months for each thirty-day session worked or twelve months
for each sixty-day session for legislative employees who have
been employed during regular sessions in thirteen
consecutive calendar years, as certified by the Clerk of the
House in which the employee served, and credit for interim
employment as provided in this subsection: And provided
further, That this legislative service credit shall also be used
for months of service in order to meet the sixty-month
requirement for the payments of a temporary legislative
employee member's retirement annuity: And provided
further, That no legislative employee may be required to pay
for any service credit beyond the actual time he or she
worked regardless of the service credit which is credited to
him or her pursuant to this section: And provided further,
That any legislative employee may request a recalculation of
his or her credited service to comply with the provisions of
this section at any time.

(g)(1) Notwithstanding any provision to the contrary, the
seven consecutive calendar years requirement and the
thirteen consecutive calendar years requirement and the
service credit requirements set forth in this section shall be
applied retroactively to all periods of legislative employment
prior to the passage of this section, including any periods of
legislative employment occurring before the seven
consecutive and thirteen consecutive calendar years
referenced in this section: Provided, That the employee has
not retired prior to the effective date of the amendments made
to this section in the two thousand two regular session of the
Legislature.

(2) The requirement of seven consecutive years and the
requirement of thirteen consecutive years apply retroactively
to all legislative employment prior to the effective date of the
two thousand six amendments to this section.

(h) The Board of Trustees shall grant service credit to any
former or present member of the State Police Death,
Disability and Retirement Fund who has been a contributing
member of this system for more than three years for service
previously credited by the State Police Death, Disability and
Retirement Fund if the member transfers all of his or her
contributions to the State Police Death, Disability and
Retirement Fund to the system created in this article,
including repayment of any amounts withdrawn any time
from the State Police Death, Disability and Retirement Fund
by the member seeking the transfer allowed in this
subsection: Provided, That there shall be added by the
member to the amounts transferred or repaid under this
subsection an amount which shall be sufficient to equal the
contributions he or she would have made had the member
been under the Public Employees Retirement System during
the period of his or her membership in the State Police Death,
Disability and Retirement Fund, excluding contributions on
lump sum payment for annual leave, plus interest at a rate
determined by the board.

(i) The provisions of section twenty-two-h of this article
are not applicable to the amendments made to this section
during the two thousand six regular session.

§5-10-15b. Credit for public employment in another state.

(a) Any member of the retirement system who has
previously been employed in public employment in any other
state of the United States is entitled to receive credited
service for the time of public employment in that state, not to
exceed five years, if the member substantiates by appropriate
documentation or evidence his or her public employment in
another state and makes contributions as required: Provided,
That the member is not entitled to receive the credited service
if the employee is vested or entitled to be vested in a
retirement system of the state in which the employment credit
was earned and the member is entitled to service credit in that
retirement system for the employment period for which the
applicant seeks credited service in West Virginia: Provided,
however, That the service credit from the other state may not
be used to meet West Virginia's eligibility requirements for retirement or vesting.

Members entitled to out-of-state service credit under the provisions of this section shall make additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the member and the employer, had the member been covered during the period of the retroactive service credit.

(b) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the Board of Trustees has the final power to determine this period.

§5-10-27c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years
or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political
subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the retirement system to an eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the retirement board.

CHAPTER 188

(Com. Sub. for S.B. 201 - By Senator Foster)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §5-10A-2, §5-10A-3, §5-10A-4, §5-10A-5, §5-10A-6, §5-10A-7 and §5-10A-8 of the Code of West Virginia, 1931, as amended, all relating to disqualification for public retirement benefits; adding the definition of "former participant"; providing for termination of retirement benefits in all public retirement plans of former and present participants who have rendered less than honorable service; and providing for retention of vested employer contributions for members of
the Teachers’ Defined Contribution Retirement System whose benefits are terminated for less than honorable service.

Be it enacted by the Legislature of West Virginia:

That §5-10A-2, §5-10A-3, §5-10A-4, §5-10A-5, §5-10A-6, §5-10A-7 and §5-10A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-2. Definitions.
§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.
§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.
§5-10A-5. Termination of benefits.
§5-10A-6. Refund of contributions.
§5-10A-7. Eligibility for new participation upon rehabilitation.
§5-10A-8. Setoff; unpaid benefits subject to execution, freezing of account upon finding of probable cause.

§5-10A-2. Definitions.

As used in this article:

(a) "Retirement plan" or "plan" means the Public Employees Retirement Act pursuant to article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-two, chapter eight of this code; each policemen's and firemen's pension and relief fund pursuant to article twenty-two, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System pursuant to article two-a, chapter fifteen of this code; the State Teachers Retirement System pursuant to article two-a, chapter fifteen of this code; the Teachers' Defined Contribution Retirement System pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System pursuant to article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement System pursuant to article fourteen-d, chapter seven of this code; the
higher education retirement plan and supplemental retirement
plans pursuant to section four-a, article twenty-three, chapter
eighteen of this code; the Judges' Retirement System
pursuant to article nine, chapter fifty-one of this code; the
West Virginia Emergency Medical Services Retirement
System pursuant to article five-v, chapter sixteen of this code;
and any other plan established pursuant to this code for the
payment of pension, annuity, disability or other benefits to
any person by reason of his or her service as an officer or
employee of this state or of any political subdivision, agency
or instrumentality thereof, whenever the plan is supported, in
whole or in part, by public funds.

(b) "Beneficiary" means any person eligible for or
receiving benefits on account of the service for a public
employer by a participant or former participant in a
retirement plan.

(c) "Benefits" means pension, annuity, disability or any
other benefits granted pursuant to a retirement plan.

(d) "Conviction" means a conviction on or after the
effective date of this article in any federal or state court of
record whether following a plea of guilty, not guilty or nolo
contendere and whether or not the person convicted was
serving as an officer or employee of a public employer at the
time of the conviction.

(e) “Former participant” means any person who is no
longer eligible to receive any benefit under a retirement plan
because full distribution has occurred.

(f) "Less than honorable service" means:

(1) Impeachment and conviction of a participant or
former participant under the provisions of section nine,
article four of the Constitution of West Virginia, except for
a misdemeanor;
(2) Conviction of a participant or former participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment; or

(3) Conduct of a participant or former participant which constitutes all of the elements of a crime described in either subdivision (1) or (2) of this subsection but for which the participant or former participant was not convicted because:

(i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or

(ii) Having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.

(g) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.

(h) "Public employer" means the State of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

(i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen's or firemen's retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by section four-a, article twenty-three, chapter eighteen of this code; and any other board, commission or public body having the duty to supervise and operate any retirement plan.
§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

(a) Whenever a supervisory board, upon receipt of a verified complaint or otherwise, has reasonable cause to believe that a participant or former participant rendered less than honorable service as defined in section two of this article, it shall notify the affected participant, former participant or beneficiary that it believes that the participant or former participant rendered less than honorable service and that the participant, former participant or beneficiary is thereby ineligible to receive benefits. A supervisory board may not issue a notice:

(1) If more than two years have elapsed since the judgment of conviction upon which the notice is based became final; or

(2) In cases described in subdivision (3), subsection (f), section two of this article, if more than two years have elapsed since, as the case may be: The plea bargaining agreement or the grant of immunity; or

(3) With respect to conduct which occurred prior to the effective date of this article.

(b) The notice shall contain a concise statement of the reasons why the board believes that the participant or former participant rendered less than honorable service and shall be made either by personal service or by certified mail, return receipt requested, to the address which the participant, former participant or beneficiary maintains for purposes of corresponding with the board. If notice is made by certified mail, service shall be considered complete upon mailing and a completed receipt constitutes proof of the receipt of the notice. The notice shall inform the participant, former participant or beneficiary that he or she has the right to demand that the board seek a determination in circuit court of his or her eligibility for benefits and membership in the
retirement plan by notifying the board of the demand within forty days. The notice shall also inform the participant, former participant or beneficiary that the board will terminate the benefits in accordance with section four of this article and refund the participant’s or former participant’s contributions with interest, less benefits previously paid as provided in section six of this article if the participant, former participant or beneficiary either waives the right to demand that the board take the matter before the circuit court or fails to respond to the board’s notice within forty days after service.

§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.

(a) If a participant, former participant or beneficiary informs the supervisory board within forty days after service of the notice as provided in section three of this article that he or she demands that the board seek a determination in circuit court, the board shall immediately file a petition in the circuit court in the county in which the board is located or in which the participant, former participant or beneficiary resides seeking that the court determine that the participant or former participant rendered less than honorable service as defined in section two of this article and that the affected participant, former participant or beneficiary is thereby ineligible to receive benefits. The circuit courts have jurisdiction to make the determinations.

(b) Upon the filing of a petition by a supervisory board, the circuit court shall give to the affected parties notice and an opportunity to be heard consistent with the demands of due process and necessary for a fair determination of the matter. Upon completion of its hearings the court shall make such findings of fact and conclusions of law as are appropriate. Except in the case of exigent circumstances, the court shall make its determination within sixty days of the filing of the petition by the board.
(c) A determination of the circuit court shall be a final order which may be appealed to the Supreme Court of Appeals in the same manner as decisions in other civil actions.

§5-10A-5. Termination of benefits.

(a) The board shall terminate a participant's, former participant's or beneficiary's membership in any and all plans in which he or she is or has been a member and shall not thereafter pay any benefits to the participant, former participant or his or her beneficiaries if an affected participant, former participant or beneficiary either waives the right to demand that the board seek a determination of eligibility in circuit court as set forth in section three of this article or fails to respond to the notice within forty days after service thereof as set forth in said section or if a circuit court has determined that the participant or former participant rendered less than honorable service in accordance with section four of this article: Provided, That this article does not authorize the termination of benefits received by a beneficiary that are received as a result of the beneficiary's own membership in a plan or the beneficiary's status as a beneficiary of a member other than the participant or former participant.

(b) If the participant or former participant is deceased and there are two or more beneficiaries at least one of whom has given the board timely notice that he or she wishes to exercise the right to demand that the board seek a determination of eligibility in circuit court, the board shall take the action as provided in this section with respect to all the beneficiaries only upon a determination by the court that the participant or former participant has rendered less than honorable service.

§5-10A-6. Refund of contributions.

The supervisory board shall refund to a participant or beneficiary terminated from benefits by section five of this
article the contributions of the participant in the same manner
and with the same interest as provided to those participants
or beneficiaries otherwise eligible to withdraw the
participant's contributions under the retirement plan, less the
amount of any benefits which the participant or his or her
beneficiaries have previously received: Provided, That a
member of the Teachers’ Defined Contribution Retirement
System whose benefits have been terminated pursuant to
section five of this article shall be refunded only his or her
employee contributions and the earnings on those
contributions. Any vested employer contributions shall
remain in the Teachers’ Defined Contribution Retirement
System and be used to offset future employer contributions
for each contributing employer.

§5-10A-7. Eligibility for new participation upon rehabilitation.

Nothing in this article prohibits a participant or former
participant made ineligible for benefits by virtue of
conviction of a crime under this article and who has paid the
full penalty imposed by law for the crime from accepting a
position as an officer or employee of the same or different
public employer and joining a retirement plan as a new
member; but the new member and his or her beneficiaries
shall remain forever ineligible for any benefits arising from
the new member’s former participation in a retirement plan.

§5-10A-8. Setoff; unpaid benefits subject to execution, freezing
of account upon finding of probable cause.

(a) The State of West Virginia or any of its political
subdivisions shall have the right of setoff against any unpaid
benefits which have accrued or may thereafter accrue under
the plan, including any contributions by the participant or
former participant for any claim caused by less than
honorable service by the participant or former participant.

(b) Notwithstanding any provision of this article to the
contrary, upon being notified by an agency of the State of
9 West Virginia or any of its political subdivisions that an 
10 employee has been charged by criminal complaint, 
11 indictment or information with an offense which constitutes 
12 less than honorable service and larceny of funds or property 
13 from a state agency or political subdivision, the retirement 
14 board shall withhold payment or refunding of any 
15 participant’s or former participant’s contributions until it 
16 receives an order from a court of competent jurisdiction 
17 reflecting that the charge has been dismissed, reflecting that 
18 the participant or former participant is found not guilty, 
19 ordering the release of all or part of the funds or directing 
20 restitution to the state or political subdivision.

21 (c) Notwithstanding any provision of the law to the 
22 contrary, any unpaid benefits which have accrued or may 
23 thereafter accrue are subject to execution, garnishment, 
24 attachment or any other legal process for collection of a 
25 judgment for the recovery of loss or damages incurred by the 
26 state or its political subdivision caused by the participant’s or 
27 former participant’s less than honorable service.

CHAPTER 189

(Com. Sub. for S.B. 208 - By Senators Foster and Plymale)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §5-10C-3, §5-10C-4 and §5-10C-5 
of the Code of West Virginia, 1931, as amended, all relating to 
government employees retirement plans; adding the West 
Virginia Emergency Medical Services Retirement System to, 
and clarifying that all other retirement systems administered by 
the Consolidated Public Retirement Board are included in, the
definition of “retirement systems” for purposes of the employer pick-up provisions; clarifying that all participating public employers in retirement systems covered by this article are included in the definition of “participating public employer”; and setting forth requirements for member contributions to be picked up for federal tax purposes by participating public employers in retirement systems covered by this article in accordance with revised guidance relating to same from the Internal Revenue Service.

Be it enacted by the Legislature of West Virginia:

That §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. 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. "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the members' deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

2. "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board created in article ten-d
of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the higher education retirement plan and supplemental retirement plan; or the boards of trustees of the firemen’s and policemen’s pension and relief funds created in article twenty-two, chapter eight of this code.

(3) "Employee" means any person, whether appointed, elected or under contract, providing services for a public employer for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by section twenty-nine, article ten of this chapter five from employees who are members of the West Virginia Public Employees Retirement System; the contributions required by section twenty-six, article two, chapter fifteen of this code from employees who are members of the West Virginia State Police Death, Disability and Retirement Fund; the contributions required by section seven, article fourteen-d, chapter seven of this code from employees who are members of the Deputy Sheriff’s Retirement System; the contributions required by section fourteen, article seven-a, chapter eighteen of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required by section fourteen-a, article seven-a of said chapter or by section four-a, article twenty-three of said chapter from employees who are members of the West Virginia higher education retirement plan and supplemental retirement plan; the contributions required by section four, article nine, chapter fifty-one of this code from employees who are members of the Judges' Retirement System; the contributions required by section nineteen, article twenty-two, chapter
eight of this code from employees who are members of
municipal firemen's and policemen's pension and relief funds;
the contributions required by section nine, article seven-b,
chapter eighteen of this code from employees who are
members of the Teachers’ Defined Contribution Retirement
System; the contributions required by section five, article
two-a, chapter fifteen of this code from the employees who
are members of the West Virginia State Police Retirement
System; or the contributions required by section eight, article
five-v, chapter sixteen of this code from employees who are
members of the West Virginia Emergency Medical Services
Retirement System.

(6) "Participating public employer" means the State of
West Virginia, any board, commission, department,
institution or spending unit and includes any agency with
full-time employees, created by rule of the Supreme Court of
Appeals, which for the purpose of this article shall be
considered a department of state government and county
boards of education with respect to teachers employed by
them; any political subdivision in the state which has elected
to cover its employees, as defined in this article, under the
West Virginia Public Employees Retirement System; any
political subdivision in the state which has elected to cover its
employees, as defined in this article, under the Deputy
Sheriff Retirement System; any political subdivision in the
state which has elected to cover its employees, as defined in
this article, under the West Virginia Emergency Medical
Services Retirement System; and any political subdivision in
this state which is subject to the provisions of article twenty-
two, chapter eight of this code.

(7) "Political subdivision" means the State of West
Virginia, a county, city or town in the state; a school
corporation or corporate unit; 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
86 performance of a governmental function and whose
87 jurisdiction is coextensive with one or more counties, cities
88 or towns, any agency or organization established by or
89 approved by the Department of Health and Human Resources
90 for the provision of community health or mental retardation
91 services and which is supported in part by state, county or
92 municipal funds.

93 (8) "Retirement system" means, as appropriate: The West
94 Virginia Public Employees Retirement System created in
95 article ten of this chapter; the West Virginia State Police
96 Death, Disability and Retirement Fund created in sections
97 twenty-six through thirty-eight, inclusive, article two, chapter
98 fifteen of this code; the West Virginia Deputy Sheriff
99 Retirement System created in article fourteen-d, chapter
100 seven of this code; the State Teachers Retirement System
101 created in article seven-a, chapter eighteen of this code; the
102 West Virginia higher education retirement plan and
103 supplemental retirement plan created in section fourteen-a,
104 article seven-a of said chapter and section four-a, article
105 twenty-three of said chapter; the Judges' Retirement System
106 created in article nine, chapter fifty-one of this code; the
107 firemen's or policemen's pension and relief funds created in
108 section sixteen, article twenty-two, chapter eight of this code;
109 the Teachers' Defined Contribution Retirement System
110 created in article seven-b, chapter eighteen of this code; the
111 West Virginia State Police Retirement System created in
112 article two-a, chapter fifteen of this code; or the West
113 Virginia Emergency Medical Services Retirement System
114 created in article five-v, chapter sixteen of this code.

115 (9) "Teacher" has the meaning ascribed to it in section
116 three, article seven-a, chapter eighteen of this code.

§5-10C-4. Pick-up of members' contributions by participating
1 public employers.
2 (a) The State of West Virginia for its public employees
3 and county boards of education for its teachers shall pick-up
and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred eighty-six. Any political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after the first day of January, one thousand nine hundred ninety-five. Counties shall pick-up and pay the contributions which the employees are required by law to make to the Deputy Sheriff Retirement System in which they are members for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred ninety-eight. Any election made by a political subdivision to pick-up and pay employee contributions prior to the first day of January, one thousand nine hundred ninety-five, remains in effect and is not altered or amended by the amendments made to this section during the regular legislative session, one thousand nine hundred ninety-five. Unless a different commencement date for pick-up is specifically stated in this section, all participating public employers under this article, with respect to retirement systems subject to this article, shall pick-up and pay the contributions which their employees are required by law to make to the retirement system in which they are members from and after the commencement of the required employee contributions.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions, although designated by statute as employee contributions, shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under those provisions.
until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases. In no event shall any employee of a participating public employer have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts directly instead of having them paid by the participating public employer into the retirement system pursuant to this article.

(c) When employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and those created pursuant to article ten of this chapter; article fourteen-d, chapter seven of this code; article two, chapter fifteen of this code; article seven-a, chapter eighteen; article nine, chapter fifty-one; section four-a, article twenty-three,
chapter eighteen of this code; section sixteen, article twenty-
two, chapter eight of this code; article seven-b, chapter
eighteen of this code; article two-a, chapter fifteen of this
code; and article five-v, chapter sixteen of this code qualify
under Section 401 of the Internal Revenue Code of 1986, as
amended, and that the member contributions picked up by the
participating public employer qualify under Subsection (h),
Section 414 of the Internal Revenue Code of 1986, as
amended. If the United States Internal Revenue Service does
not approve of certain sections or phraseology of certain
sections of this article as being in compliance with the
statutes or regulations governing the Internal Revenue
Service, the respective boards of trustees, in the adoption of
the deferred compensation plan, shall adopt the terminology
with respect to those sections that comply with the statutes or
regulations governing the Internal Revenue Service.

CHAPTER 190

(Com. Sub. for S.B. 650 - By Senators Foster, Oliverio
and Plymale)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §16-5V-2, §16-5V-6, §16-5V-8,
§16-5V-9, §16-5V-14, §16-5V-18, §16-5V-19, §16-5V-25 and
§16-5V-32 of the Code of West Virginia, 1931, as amended, all
relating to the Emergency Medical Services Retirement System;
adding and modifying definitions; specifying that members
hired after the effective date of this plan are members of the plan
as a condition of employment; clarifying language relating to the
participation of public employers in this plan; clarifying
language relating to the transfer of Public Employees Retirement System service credit and reinstatement of service as an emergency medical services officer; specifying the date on which contributions are due the fund and providing for delinquency fees for late payments; clarifying language relating to purchase of prior service and providing for delinquency fees for late payments; eliminating minimum required eligible direct rollover distributions paid directly to an eligible retirement plan; allowing distributions totaling less than two hundred dollars within the definition of eligible rollover distribution; clarifying the language relating to the benefit awarded for a duty disability; adding provisions for the payment of additional death benefits; clarifying language relating to the effective date for receipt of a duty disability benefit; and making a correction to the time period for which the Joint Committee on Government and Finance shall conduct an interim study on the potential effects of the implementation of this plan.

Be it enacted by the Legislature of West Virginia:

That §16-5V-2, §16-5V-6, §16-5V-8, §16-5V-9, §16-5V-14, §16-5V-18, §16-5V-19, §16-5V-25 and §16-5V-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.
§16-5V-6. Members.
§16-5V-8. Members' contributions; employer contributions.
§16-5V-9. Transfer from Public Employees Retirement System.
§16-5V-14. Direct rollovers.
§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.
§16-5V-25. Additional death benefits and scholarships -- Dependent children.
§16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.
§16-5V-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first twenty years of credited service. Additionally, two percent per year for twenty-one through twenty-five years and one percent per year for twenty-six through thirty years will be credited with a maximum benefit of sixty-seven percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section twelve of this article.

(1) The board may upon the recommendation of the board's actuary increase the employees' contribution rate to ten and five-tenths percent should the funding of the plan not reach seventy percent funded by the first day of July, two thousand twelve. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the seventy percent support objective as of any later actuarial valuation date.

(2) Upon reaching the seventy-five percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first twenty years of credited service. The maximum benefit will also be increased from sixty-seven percent to seventy percent.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.
(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed one hundred thousand dollars as adjusted for cost-of-living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's
65 normal retirement age and after completing proper written
66 application for "retirement" on an application supplied by the
67 board.

68 (h) "Board" means the Consolidated Public Retirement
69 Board.

70 (i) "County commission or political subdivision" has the
71 meaning ascribed to it in this code.

72 (j) "Covered employment" means either: (1) Employment
73 as a full-time emergency medical technician, emergency
74 medical technician/paramedic or emergency medical
75 services/registered nurse and the active performance of the
76 duties required of emergency medical services officers; or (2)
77 the period of time during which active duties are not
78 performed but disability benefits are received under this
79 article; or (3) concurrent employment by an emergency
80 medical services officer in a job or jobs in addition to his or
81 her employment as an emergency medical services officer
82 where the secondary employment requires the emergency
83 medical services officer to be a member of another retirement
84 system which is administered by the Consolidated Public
85 Retirement Board pursuant to this code: Provided, That the
86 emergency medical services officer contributes to the fund
87 created in this article the amount specified as the member's
88 contribution in section eight of this article.

89 (k) "Credited service" means the sum of a member's years
90 of service, active military duty, disability service and accrued
91 annual and sick leave service.

92 (l) "Dependent child" means either:

93 (1) An unmarried person under age eighteen who is:

94 (A) A natural child of the member;
(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(m) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(n) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) "Early retirement age" means age forty-five or over and completion of twenty years of service.

(p) "Effective date" means the first day of January, two thousand eight.
(q) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(r) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section twenty-two of this article multiplied by twelve. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(s) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires twelve months per year service and requires at least one thousand forty hours per year service in that position.
(t) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(u) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section nineteen or twenty of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services
Retirement System after the effective date of this article, as defined in subsection (p) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(x) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(y) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age fifty years and when the sum of current age plus regular contributory years of service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years and completion of ten years of regular contributory service; or
(4) Attainment of age sixty-two years and completion of
five or more years of regular contributory service.

(z) "Political subdivision" means 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; and 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: Provided, That
any public corporation established under section four, article
fifteen, chapter seven of this code is considered a political
subdivision solely for the purposes of this article.

(aa) "Public Employees Retirement System" means the
West Virginia Public Employee's Retirement System created
by West Virginia Code.

(bb) "Plan" means the West Virginia Emergency Medical
Services Retirement System established by this article.

(cc) "Plan year" means the twelve-month period
commencing on the first day of January of any designated
year and ending the following thirty-first day of December.

(dd) "Regular interest" means the rate or rates of interest
per annum, compounded annually, as the board adopts in
accordance with the provisions of this article.

(ee) "Retirement income payments" means the monthly
retirement income payments payable under the plan.

(ff) "Spouse" means the person to whom the member is
legally married on the annuity starting date.
(gg) "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.

(hh) "Totally disabled" means a member's 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:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer 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:

(A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(ii) "Required beginning date" means the first day of April of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and
one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment; or (3) for members who are covered under the Public Employees Retirement System, their service shall be recognized upon transfer of assets from the Public Employees Retirement System according to the provisions of section nine of this article. Prior service for members not covered under the Public Employees Retirement System shall be recognized only upon repayment of amounts covered under the provisions of section six of this article.

(jj) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section nineteen or twenty of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon
termination of employment pursuant to section eighteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section eighteen of this article or has prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

§16-5V-6. Members.

(a) Any emergency medical services officer first employed by a county or political subdivision in covered employment after the effective date of this article shall be a member of this retirement plan as a condition of employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

(b) Any emergency medical services officer employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county or officials in their political subdivision in which he or she is employed and the board of his or her desire to become a member of the plan by the thirty-first day of December, two thousand seven. Any emergency medical services officer who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency medical services officer remains employed in covered employment by an employer which is currently a participating public employer of this plan: Provided, That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement
system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any emergency medical services officer who was employed as an emergency medical services officer prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless: (1) The emergency medical services officer has not received the return of his or her accumulated contributions in the Public Employees Retirement Fund System pursuant to section thirty, article ten, chapter five of this code; or (2) the accumulated contributions returned to the member from the Public Employees Retirement System have been repaid pursuant to this article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the emergency medical services officer's covered employment shall be counted as years of service for the purposes of this article.

(d) Any emergency medical services officer employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer’s service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer’s credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency
medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: Provided, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as an emergency medical services officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All emergency medical services officers employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and emergency medical services officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

(f) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a
§16-5V-8. Members' contributions; employer contributions.

There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary earned as an emergency medical services officer as well as the sum of eight and one-half percent of his or her monthly salary earned from any additional employment which additional employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional ten and one-half percent of the monthly salary of each member shall be paid to the fund by the concurrent employer by which the member is employed. All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board upon the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any county commission or political subdivision which fails to make any payment due the Emergency Medical Services Retirement Fund by the fifteenth day following the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total
amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent county commission or political subdivision commences after the fifteenth day following the end of the calendar month in which contributions are due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is fifty dollars.

§16-5V-9. Transfer from Public Employees Retirement System.

(a) The Consolidated Retirement Board shall, within one hundred eighty days of the effective date of the transfer of an emergency medical services officer from the Public Employees Retirement System to the plan, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) The amount of assets to be transferred for each transferring emergency medical services officer shall be computed as of the first day of January, two thousand eight, using the first day of July, two thousand seven, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring emergency medical services officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of the first day of July, two thousand seven, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries,
26 disabled retirees and terminated inactive members as of the first day of July, two thousand seven, actuarial valuation date;

29 (3) Compute the market value of active member assets in the Public Employees Retirement System as of the first day of July, two thousand seven, by reducing the assets value under subdivision one of this subsection by the inactive liabilities under subdivision (2) of this subsection;

34 (4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of the first day of July, two thousand seven, actuarial valuation date approved by the board;

38 (5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of the first day of July, two thousand seven, by dividing the active members' market value of assets under subdivision three of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

45 (6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of the first day of July, two thousand seven, for active emergency medical services officers transferring to the Emergency Medical Services Retirement System;

50 (7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at seven
and five-tenths percent for the period from the calculation date of the first day of July, two thousand seven, through the first day of the month in which the asset transfer is to be completed.

(c) Once an emergency medical services officer has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System and constitutes an agreement whereby the transferring emergency medical services officer forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that emergency medical services officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the Emergency Medical Services Retirement System.

(d) Eligible emergency medical services officers that transfer from plans other than the Public Employees Retirement System shall have service recognized under this plan through the purchase of the service through payment by the member of sixty percent of the actuarial accrued liabilities which would result if the service is credited under the Emergency Medical Services Retirement System subject to the following:

(1) The service may be purchased in one-year increments of eligible service or for the total period of eligible service;

(2) Payment must begin within twelve months of the effective date of this article;
(3) Payment must be made in either a one-time lump sum payment received by the board no later than the thirty-first day of December, two thousand eight, or in regular installment payments payable over sixty months with the initial installment received by the board on or before the thirty-first day of December, two thousand eight;

(4) The rate of interest applicable to regular installment payments for the purchase of service shall be the actuarial interest rate assumption as approved by the board for completing the actuarial valuation for the plan year immediately preceding the first day of the plan year in which the service purchase is made, compounded per annum;

(5) Once payments commence, selection of the period of service being purchased may not be amended; and

(6) Service will be credited only upon receipt by the board of all payments due.

§16-5V-14. Direct rollovers.

This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not
less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (C) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (D) any hardship distribution described in Section 401(k) (2) (B) (i) (iv) of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan.
§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal, the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who ceases employment in covered employment and active participation in this plan and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn accumulated contributions from either this plan or the Public Employees Retirement System unless following his or her return to covered employment and active participation in this plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

The repayment authorized by this subsection shall be made in a lump sum within sixty months of the emergency medical services officer's reemployment in covered employment or, if later, within sixty months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b), section six of this article may not,
after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nonemergency medical services officer service withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with this section or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining early or normal retirement age.

(e) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.


(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing emergency medical services functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, one of whom shall be named by the board, the member is by reason of the disability unable to perform adequately the duties required of an emergency medical services officer, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the member attains normal retirement age or until the
disability sooner terminates, the compensation under this section.

(b) If the member is totally disabled, the member shall receive ninety percent of his or her average full monthly compensation for the twelve-month period preceding the member's disability or the shorter period if the member has not worked twelve months.

(c) If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided in sections sixteen and seventeen of this article.

§16-5V-25. Additional death benefits and scholarships -- Dependent children.

(a) In addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse one hundred dollars monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse's entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is 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: Provided, however, That if there is no surviving spouse, dependent child or dependent
parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a 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 six thousand dollars per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this State approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

§16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.

(a) The provisions of this article become effective the first day of January, two thousand eight: *Provided,* That no payout of any benefits may be made to any person prior to
the first day of January, two thousand eleven: Provided, however, That emergency medical services officers who retire due to a duty disability pursuant to this article may begin receiving the benefits at the rate and in the amount specified in this article from this fund after the thirtieth day of June, two thousand eight: Provided further, That until the thirtieth day of June, two thousand eight, those emergency medical services officers who retire due to a duty disability pursuant to this article may draw benefits from this fund at the rate and in the amount set forth in section twenty-five, article ten, chapter five of this code.

(b) During the thirty-six month period before the payout of benefits begins, the Joint Committee on Government and Finance shall cause an interim study or studies to be conducted on the potential effects of the implementation of this retirement system, including, but not limited to, potential funding mechanisms to provide health insurance coverage for retirees in the fifty to fifty-five age group: Provided, That after the effective date of this provision, the Director of the Public Employees Insurance Agency shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the funding of health insurance coverage for retirees under the plan provided in this article who are in the fifty to fifty-five year age group, which rule may be filed as an emergency rule: Provided, however, That any rule filed as an emergency rule pursuant to this subsection shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.
AN ACT to amend and reenact §16-19-1, §16-19-2, §16-19-3, §16-19-4, §16-19-5, §16-19-6, §16-19-7, §16-19-8, §16-19-9, §16-19-10, §16-19-11, §16-19-12, §16-19-13 and §16-19-14 of the Code of West Virginia, 1931, as amended; and to amend said article by adding thereto nine new sections, designated §16-19-15, §16-19-16, §16-19-17, §16-19-18, §16-19-19, §16-19-20, §16-19-21, §16-19-22 and §16-19-23, all establishing the Revised Anatomical Gift Act; providing for a short title; establishing applicability; defining terms; identifying who may make an anatomical gift before the donor’s death; establishing the manner of making an anatomical gift before the donor’s death; providing for amendment or revocation of an anatomical gift before the donor’s death; clarifying donor right to refuse to make an anatomical gift and the effect of such refusal; specifying the preclusive effect of an anatomical gift, amendment or revocation; identifying who may make an anatomical gift of a body or part after death of the donor; establishing the manner of making, amending or revoking an anatomical gift after the decedent’s death; identifying persons and institutions to whom anatomical gifts may be made; establishing presumptions for distribution of body and parts if donor does not specify to whom gift passes; requiring first responders, hospital staff and medical examiners to conduct a reasonable search of the body of a decedent for evidence of an anatomical gift or refusal to make a gift; specifying that delivery of document of gift during donor’s lifetime not
required; identifying who may examine a document of gift; establishing rights and duties of procurement organization in recovering a body or part the subject of an anatomical gift; requiring hospitals to cooperate with procurement organizations for purposes of recovering anatomical gifts; creating the offense of knowingly buying or selling a body part for transplantation or therapy; creating the offense of intentionally falsifying, concealing, defacing or obliterating a document of gift, amendment or revocation; establishing immunity from civil liability for good faith efforts to comply with article; specifying which law governs documents of gift; establishing donor registry through Division of Motor Vehicles and standards of operation; specifying effect of anatomical gift on advance health care directives; requiring cooperation between medical examiner and procurement organization; establishing standards and conditions for medical examiner’s release of body or part subject to anatomical gift to procurement organizations; requiring authorization of prosecuting attorney for release of body or recovery of part where death is subject to criminal investigation; and establishing relation to Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:


ARTICLE 19. ANATOMICAL GIFT ACT.


1 This article may be cited as the “Revised Anatomical Gift Act.”


1 This article applies to an anatomical gift or to an amendment to, revocation of or refusal to make an anatomical gift, whenever made.


1 As used in this article:

2 (1) “Adult” means an individual who is at least eighteen (18) years of age.

4 (2) “Agent” means an individual:
(A) Authorized by a medical power of attorney to make health care decisions on behalf of a prospective donor; or

(B) Expressly authorized by any other record signed by the donor to make an anatomical gift on his or her behalf.

(3) “Anatomical gift” means a donation of all or part of a human body, to take effect after the donor’s death, for the purpose of transplantation, therapy, research or education.

(4) “Authorized person” means a person other than the donor who is authorized to make an anatomical gift of the donor’s body or part by section four or section nine of this article.

(5) “Certification of death” means a written pronouncement of death by an attending physician. Certification is required before an attending physician can allow removal of any part from the decedent’s body for transplant purposes.

(6) “Decedent” means a deceased individual whose body is or may be the source of an anatomical gift. The term “decedent” includes a stillborn infant and, subject to restrictions imposed by law other than this article, a fetus.

(7) “Disinterested witness” means a witness other than the spouse, child, parent, sibling, grandchild, grandparent or guardian of or another adult who exhibited special care and concern for an individual who has made, amended, revoked or refused to make an anatomical gift. The term “disinterested witness” does not include a person to whom an anatomical gift may pass pursuant to section eleven of this article.

(8) “Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a
statement or symbol on a driver’s license, identification card or donor registry.

(9) “Donor” means an individual whose body or part is the subject of an anatomical gift.

(10) “Donor registry” means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(11) “Driver’s license” means a license or permit issued by the Division of Motor Vehicles to operate a vehicle.

(12) “Eye bank” means a person licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes.

(13) “Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health or welfare of an individual. The term “guardian” does not include a guardian ad litem.

(14) “Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state or a subdivision of a state.

(15) “Identification card” means an identification card issued by the Division of Motor Vehicles pursuant to section one, article two, chapter seventeen-b of this code.

(16) “Know” means to have actual knowledge. It does not include constructive notice and other forms of imputed knowledge.

(17) “Medical examiner” means an individual appointed pursuant to article twelve, chapter sixty-one of this code to perform death investigations and to establish the cause and
manner of death. The term “medical examiner” includes any
person designated by the medical examiner to perform any
duties required by this article.

(18) “Minor” means an individual who is under eighteen
(18) years of age.

(19) “Organ procurement organization” means a
nonprofit entity designated by the Secretary of the United
States Department of Health and Human Services as an organ
procurement organization pursuant to 42 U.S.C. §273(b).

(20) “Parent” means another person's natural or adoptive
mother or father whose parental rights have not been
terminated by a court of law.

(21) “Part” means an organ, an eye or tissue of a human
being. The term does not include the whole body.

(22) “Person” means an individual, corporation, business
trust, estate, trust, partnership, limited liability company,
association, joint venture, public corporation, government or
governmental subdivision, agency, or instrumentality, or any
other legal or commercial entity.

(23) “Physician” means an individual authorized to
practice medicine or osteopathy under the law of any state.

(24) “Physician assistant” has the meaning provided in
section sixteen, article three, chapter thirty of this code.

(25) “Procurement organization” means an eye bank,
organ procurement organization or tissue bank.

(26) “Prospective donor” means an individual who is
dead or near death and has been determined by a procurement
organization to have a part that could be medically suitable
for transplantation, therapy, research or education. The term “prospective donor” does not include an individual who has made a refusal.

(27) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(28) “Recipient” means an individual into whose body a decedent's part has been or is intended to be transplanted.

(29) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(30) “Revocation” means the affirmative declaration of the potential donor's withdrawal of their decision to make or not make a document of gift. It does not have the same meaning as a refusal but only establishes that the potential donor chooses not to make an affirmative declaration of their wishes.

(31) “Refusal” means a record created under section seven of this article that expressly states an individual’s intent to bar other persons from making an anatomical gift of his or her body or part.

(32) “Sign” means to execute or adopt a tangible symbol or attach to or logically associate with the record an electronic symbol, sound or process, with the present intent to authenticate or adopt a record.

(33) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(34) “Surrogate” means an individual eighteen years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of article thirty of this chapter as the person who is to make those decisions in accordance with the provisions of this article.

(35) “Technician” means an individual qualified to remove or process parts by an organization that is licensed, accredited or regulated under federal or state law. The term “technician” includes an enucleator, i.e., an individual who removes or processes eyes or parts of eyes.

(36) “Tissue” means a portion of the human body other than an organ or an eye. The term “tissue” does not include blood unless the blood is donated for the purpose of research or education.

(37) “Tissue bank” means a person that is licensed, accredited or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue.

(38) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.


Subject to section eight of this article, an anatomical gift may be made during the life of the donor for the purpose of transplantation, therapy, research or education by:

(1) The donor, if the donor is an adult;
(2) The donor, if the donor is a minor and is emancipated or sixteen (16) years of age or older;

(3) An agent of the donor, unless the medical power of attorney or other record prohibits the agent from making an anatomical gift;

(4) A parent of the donor, if the donor is an unemancipated minor; or

(5) The donor’s guardian.


(a) A donor may make an anatomical gift:

(1) By authorizing a statement or symbol to be imprinted on his or her driver’s license or identification card indicating that he or she has made an anatomical gift;

(2) In a will;

(3) During a terminal illness or injury, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) As provided in subsection (b) of this section.

(b) (1) A donor or a person authorized by section four of this article may make a gift by:

(A) A donor card or other record signed by the donor or the authorized person; or

(B) Authorizing a statement or symbol indicating that the donor has made an anatomical gift to be included on a donor registry.
(2) If the donor or the authorized person is physically unable to sign a record, another individual may sign at the direction of the donor or the authorized person if the document of gift:

(A) Is witnessed and signed by at least two adults, at least one of whom is a disinterested witness; and

(B) Contains a statement that it has been signed and witnessed as required by paragraph (A) of this subdivision.

(c) Revocation, suspension, expiration or cancellation of a driver’s license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor’s death regardless of whether the will is probated. Invalidation of the will after the donor’s death does not invalidate the gift.

§16-19-6. Amending or revoking anatomical gift before donor’s death.

(a) Subject to section eight of this article, a donor or a person authorized pursuant to section four of this article may amend or revoke an anatomical gift by:

(1) (A) A record signed and dated by the donor or the authorized person.

(B) If the donor or the authorized person is physically unable to sign a record, another individual may sign at the direction of the donor or the authorized person if the document of gift:

(i) Is witnessed and signed by at least two adults, at least one of whom is a disinterested witness; and
(ii) Contains a statement that it has been signed and witnessed as required by subparagraph (i) of this paragraph; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift, or portion of an anatomical gift, either expressly or by inconsistency.

(b) Subject to section eight of this article, a donor or a person authorized by section four of this article may revoke an anatomical gift by destroying or cancelling the document of gift, or the relevant portion of the document of gift, with the intent to revoke the gift.

c) During a terminal illness or injury, a donor may amend or revoke an anatomical gift that was not made in a will by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

d) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

§16-19-7. Refusal to make anatomical gift; effect of refusal.

(a) An individual may express his or her refusal to make an anatomical gift of his or her body or body parts by:

(1) A record signed by the individual. If the individual is physically unable to sign, another person acting at the direction of the individual may sign if the refusal:

(A) Is witnessed and signed by at least two adults, at least one of whom is a disinterested witness, at the request of the individual; and
(B) Contains a statement that it has been signed and witnessed as provided in paragraph (A) of this subdivision;

(2) The individual’s will, regardless of whether the will is admitted to probate or invalidated after the individual’s death; or

(3) During a terminal illness or injury of the individual, any form of communication made by the individual addressed to at least two adults, at least one of whom is a disinterested witness.

(b) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) of this section for making a refusal;

(2) By subsequently making an anatomical gift pursuant to section five of this article that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(c) Except as otherwise provided in section eight of this article, in the absence of an express, contrary indication set forth in the refusal, an individual’s unrevoked refusal to make an anatomical gift of his or her body or part bars all other persons from making an anatomical gift of the individual’s body or part.


(a) Except as otherwise provided in subsections (g) and (f) of this section, in the absence of an express, contrary
indication by the donor who has made or amended an anatomical gift, a person other than the donor is barred from making, amending or revoking an anatomical gift of the donor's body or part.

(b) If an authorized person makes an unrevoked anatomical gift or an amendment to an anatomical gift of the donor's body or part, no other person may make, amend or revoke the anatomical gift after the donor's death.

(c) A revocation of an anatomical gift by the donor or by another individual who is authorized to act on behalf of the donor under any section of this Act, is not a refusal. Following the revocation, the donor, or any person authorized by any section of this act to act on behalf of the donor before the donor's death, or any person authorized to act on behalf of the decedent after the decedent's death, may subsequently make an anatomical gift of the body or part thereof.

(d) In the absence of an express, contrary indication by the donor or the person authorized to make an anatomical gift under section four of this article, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section four of this article, an anatomical gift of a part for one purpose is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section five or section ten of this article.

(f) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.
§16-19-9. Who may make anatomical gift of decedent’s body or part.

(a) Unless barred by section seven or section eight of this article, an anatomical gift of a decedent’s body or part for purpose of transplantation, therapy, research or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

1. A person holding a medical power of attorney or another agent of the decedent at the time of death who could have made an anatomical gift under section four of this article immediately before the decedent’s death;

2. The spouse of the decedent, unless in the six (6) months prior to the decedent’s death the spouse has lived separate and apart from the decedent in a separate place of abode without cohabitation;

3. Adult children of the decedent;

4. The person acting as the guardian of the decedent at the time of death;

5. An appointed health care surrogate;

6. Parents of the decedent;

7. Adult siblings of the decedent;

8. Adult grandchildren of the decedent;

9. Grandparents of the decedent; or

10. An adult who exhibited special care and concern for the decedent.
(b) If there is more than one member of a class entitled to make an anatomical gift, any member of the class may make the anatomical gift unless he or she or a person to whom the anatomical gift may pass pursuant to section eleven of this section knows of an objection by another member of the class. If an objection is known, the majority of the members of the same class must be opposed to the donation in order for the donation to be revoked. In the event of a tie vote, the attending physician or advanced nurse practitioner shall appoint a health care surrogate to decide whether to make an anatomical gift of the decedent’s body or part for the purpose of transplantation, therapy, research or education.

(c) A person may not make an anatomical gift if, at the time of the decedent’s death, a person in a prior class is reasonably available to make or to object to the making of an anatomical gift.

§16-19-10. Manner of making, amending, or revoking anatomical gift of decedent’s body or part.

(a) A person authorized to make an anatomical gift under section nine of this article may do so by:

(1) A document of gift signed by the authorized person; or

(2) An oral communication by the authorized person that is electronically recorded or is contemporaneously reduced to a record and signed by the person receiving the oral communication.

(b) An anatomical gift by a person authorized by section nine of this article may be amended or revoked orally or in writing by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by the authorized person may be revoked only if a majority of the members of the
same class are opposed to the anatomical gift. In the event of
a tie vote, a health care surrogate shall be appointed to decide
whether to honor, amend or revoke the anatomical gift of the
decedent’s body or part.

(c) A revocation under subsection (b) of this section is
effective only if, before an incision has been made to remove
a part from the donor’s body or before invasive procedures
have begun to prepare the recipient, the procurement
organization, transplant hospital or physician or technician
knows of the revocation.

§16-19-11. Persons who may receive anatomical gift; purpose of
anatomical gift.

(a) An anatomical gift may be made to the following
persons named in the document of gift:

(1) A hospital; accredited medical school, dental school,
college, or university; organ procurement organization; or
other appropriate person, for research or education;

(2) An individual designated by the person making the
anatomical gift as the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift is made to an individual under
subdivision (2), subsection (a) of this section and the donated
body part cannot be transplanted into the named individual,
in the absence of an express, contrary indication by the
person making the anatomical gift, the part passes pursuant
to subsection (g) of this section;

(c) If a document of gift makes an anatomical gift and
identifies the purpose for which the gift may be used but does
not designate a person described in subsection (a) of this
section to receive the gift, the following rules apply:
(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) If the document of gift states more than one purpose of an anatomical gift but does not specify the priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If the document of gift does not identify the purpose of the anatomical gift, the gift may be used only for transplantation or therapy and passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by using words such as “donor”, “organ donor”, or “body donor”, or by a symbol or statement of similar import, the gift may be used for transplantation, research or therapy and passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section, and anatomical gift passes in the following manner:
48  (1) If the part is an eye, the gift passes to the appropriate
eye bank.

50  (2) If the part is tissue, the gift passes to the appropriate
tissue bank.

52  (3) If the part is an organ, the gift passes to the
appropriate organ procurement organization as custodian of
the organ.

55  (h) An anatomical gift of an organ for transplantation or
therapy, other than a gift to an individual described in
subdivision (2), subsection (a) of this section, passes to an
organ procurement organization as custodian of the organ.

59  (i) If an anatomical gift does not pass pursuant to
subsections (a) through (h) of this section or the body or part
is not used for transplantation, therapy, research, or
education, custody of the body or part passes to the person
under obligation to dispose of the body or part.

64  (j) A person may not accept an anatomical gift if he or
she knows that:

66  (1) The gift was not effectively made pursuant to this
article; or

68  (2) The decedent made a refusal under section seven of
this article that was not revoked.

70  (k) For purposes of subsection (j), if a person knows that
an anatomical gift was made in a document of gift, the person
is presumed to know of any amendment or revocation of the
gift or any refusal to make an anatomical gift in the same
document of gift.

(a) A law-enforcement officer, firefighter, paramedic or other emergency rescuer finding an individual he or she reasonably believes is dead or near death shall as soon as practical make a reasonable search of the individual for a document of gift or other information identifying the individual as a donor or as having made a refusal. If a document of gift or a refusal is located by the search and the individual is taken to a hospital, the person who conducted the search shall send the document of gift or refusal to the hospital.

(b) If no other source of the information is immediately available, hospital staff shall search an individual reasonably believed to be dead or near death as soon as practical after the arrival at the hospital for a document of gift or other information identifying the individual as a donor or as having made a refusal.

(c) A medical examiner shall conduct a reasonable search of an individual whose body is placed in his or her custody for a document of gift or other information identifying the individual as a donor or as having made a refusal.

(d) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.


(a) A document of gift need not be delivered during the donor’s lifetime to be effective.
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(b) Upon or after an individual’s death, a person in possession of a document of gift or a refusal with respect to the decedent shall allow: (1) A person authorized to make or object to the making of an anatomical gift with respect to the decedent; or (2) a person to whom the gift could pass under section eleven of this article to examine and copy the document of gift or refusal.


(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Division of Motor Vehicles and any donor registry it knows of for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) The Division of Motor Vehicles shall allow a procurement organization reasonable access to information in the division’s records to ascertain whether an individual at or near death is a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code to facilitate procurement agencies’ access to records pursuant to this subsection.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the prospective donor expressed a contrary intent.
(d) Unless prohibited by law, at any time after a donor’s death, a person to whom a decedent’s part passes under section eleven of this article may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section nine of this article having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended or revoked, it shall promptly advise the other person of all relevant information.

(h) Except as provided in and section twenty-two of this article, the rights of the person to whom a part passes under section eleven of this article are superior to the rights of all others. A person may accept or reject an anatomical gift, in whole or in part. Subject to the terms of the document of gift and this article, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to whom the part passes under section eleven of this article shall, upon the death of the donor and before
embalming, burial or cremation, cause the part to be removed without unnecessary mutilation.

(i) Neither the physician or the physician assistant who attends the decedent at death nor the physician or the physician assistant who determines the time of death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.


Each hospital licensed in this state shall enter into agreements or affiliations with procurement organizations for coordinating procurement and use of anatomical gifts.

§16-19-16. Prohibited acts; sale or purchase of parts prohibited.

(a) Except as provided in subsection (b) of this section, a person who knowingly buys or sells, for valuable consideration, a part for transplantation or therapy is guilty of a felony, and upon conviction thereof, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in a state correctional facility for a term of not more than five years, or both fined and imprisoned.

(b) A person who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces or obliterates a document of gift, an amendment or revocation of a document of gift or a refusal is guilty of a felony, and upon conviction thereof, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in a state correctional facility for a term of not more than five years.
(c) Nothing in this section prohibits a person from charging reasonable amounts for the costs of removing, processing, preserving, quality control, storing, transporting, implanting or disposing of a part.


(a) A person, including a medical examiner, who acts in accordance with this article or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor’s estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended or revoked under this article, a person to whom a gift passes may rely upon an individual’s representations that he or she is the donor or a person authorized to make a gift of the body or part pursuant to subsection (a), section nine of this article, unless the person to whom the gift may pass knows that the representation is untrue.

§16-19-18. Law governing validity; choice of law as to execution of document of gift; presumption of validity.

(a) A document of gift is valid if executed in accordance with:

(1) This article;

(2) The laws of the state or country where it was executed; or
(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.


(a) The Division of Motor Vehicles may establish or contract for the establishment of a donor registry.

(b) The Division of Motor Vehicles shall cooperate with a person that administers any donor registry established or contracted for pursuant to this section or recognized for the purpose of transferring to the donor registry all relevant information regarding a donor’s making, amendment to, or revocation of an anatomical gift.

(c) A donor registry must:

(1) Allow a donor or person authorized under section four of this article to include on the donor registry a statement or symbol that the donor has made, amended or revoked an anatomical gift;

(2) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift; and
(3) Be accessible for purposes of paragraphs (1) and (2) of this subsection twenty-four hours a day, seven days a week.

(d) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift.

(e) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any private donor registry must comply with subsections (c) and (d) of this section.


(a) In this section:

(1) “Advance health-care directive” means a medical power of attorney or a record signed or authorized by a prospective donor containing the prospective donor’s direction concerning a health-care decision for the prospective donor.

(2) “Declaration” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) “Health-care decision” means any decision regarding the health care of the prospective donor.
(b) If a prospective donor has a declaration or advance health care directive, the terms of which are in conflict with the express or implied terms of a potential anatomical gift with regard to administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the attending physician and the prospective donor shall confer to resolve the conflict.

(1) If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor’s declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this article to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict as quickly as possible.

(2) A procurement organization and any person authorized to make an anatomical gift on behalf of a prospective donor pursuant to section nine of this article shall provide any information relevant to the resolution of the conflict.

(3) Pending resolution of the conflict, measures necessary to ensure the medical suitability of a part may not be withheld or withdrawn from the prospective donor unless doing so is contraindicated by appropriate end-of-life care.


(a) A medical examiner shall cooperate with a procurement organization to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research or education.

(b) If a medical examiner receives notice from a procurement organization that an anatomical gift was or
might have been made with respect to a decedent whose body is in the custody of the medical examiner, the medical examiner shall endeavor to conduct a post-mortem examination in a manner and within a period compatible with its preservation for the purposes of the gift, unless the medical examiner denies recovery in accordance with section twenty-two of this article.

(c) While the decedent’s body is in the custody of a medical examiner, a part may not be removed for transplantation, therapy, research or education or the body delivered for research and education unless the part or the body is the subject of an anatomical gift. This subsection does not preclude a medical examiner from performing a medicolegal investigation upon the decedent’s body or parts while in his or her custody.

§16-19-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.

(a) Except as provided in subsection (e) of this section, the medical examiner shall, upon request of a procurement organization, release to the procurement organization the name, contact information and available medical and social history of a decedent whose body is in the custody of the medical examiner. If the decedent’s body or part is medically suitable for transplantation, therapy, research or education, the medical examiner shall release post-mortem examination results after being paid in accordance with the fee schedule established in rules to the procurement organization, subject to subsection (e) of this section. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

(b) The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test
results, x-rays, other diagnostic results and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner which the medical examiner determines may be relevant to the investigation.

(c) A person with any information requested by a medical examiner pursuant to subsection (b) of this section shall provide that information as soon as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research or education.

(d) If the medical examiner determines that a post-mortem examination is not required or that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research or education.

(e) If the decedent’s death is the subject of a criminal investigation, the medical examiner may not release the body or part that is the subject of an anatomical gift or the social history, medical history or post-mortem examination results without the express authorization of the prosecuting attorney of the county having jurisdiction over the investigation.

(f) If an anatomical gift of a part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent’s cause or manner of death, the medical examiner shall consult with the procurement organization about the proposed recovery. After the consultation, the medical examiner may allow the
recovery at his or her discretion. The medical examiner may attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part.

(g) If the medical examiner denies recovery of the part, he or she shall:

(1) Provide the procurement organization with a written explanation of the specific reasons for not allowing recovery of the part; and

(2) Include in the medical examiner’s records the specific reasons for denying recovery of the part.

(h) If the medical examiner allows recovery of a part, the procurement organization shall, upon request, cause the physician or technician who removes the part to provide the medical examiner with a written report describing the condition of the part, a biopsy, a photograph or any other information and observations that would assist in the post-mortem examination.

(i) A medical examiner who decides to be present at a removal procedure pursuant to subsection (f) of this section is entitled to reimbursement for the expenses associated with appearing at the recovery procedure from the procurement organization which requested his or her presence.

(j) A medical examiner performing any of the functions specified in this section shall comply with all applicable provisions of article twelve, chapter sixty-one of this code.


This act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
3 §7001 et seq., but does not modify, limit or supersede Section
4 101(a) of that act, 15 U.S.C. Section 7001, or authorize
5 electronic delivery of any of the notices described in Section
6 103(b) of that act, 15 U.S.C. Section 7003(b).

CHAPTER 192

(H.B. 4406 - By Delegates DeLong, Shaver, Williams,
Rodighiero, Rowan, Eldridge, Sobonya, Sumner, Fragale
and C. Miller)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §18-2E-5d; and to
amend and reenact §18-9D-2 and §18-9D-16 of said code, all
relating generally to the School Building Authority and to state
board standards for the recommended duration of school bus
transportation times for students to and from school; modifying
definitions and qualifications for construction projects and
major improvement projects; limiting county board authority to
establish new routes for certain students to certain schools
unless certain requirements met; providing for state board to
permit new routes in excess of limit up to certain limit;
requiring state board to provide certain technical assistance;
requiring countywide comprehensive facilities plans required
by School Building Authority to address providing facility
infrastructure that avoids excessive transportation times;
requiring guidelines for update of transportation times in
approved facilities plans; prohibiting project approval by
authority when transportation route times for certain students
exceed limits unless state board permission is granted.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-5d; and that §18-9D-2 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5d. Standards for the duration of school bus transportation times for students to and from school.

(a) The high quality standards for transportation adopted by the state board pursuant to section five of this article shall include standards for the recommended duration of the one-way school bus transportation time for students to and from school under normal weather and operating conditions as follows:

1. For elementary school students, thirty minutes;
2. For middle school, intermediate school and junior high school students, forty-five minutes; and
3. For high school students, sixty minutes.

(b) A county board may not create a new bus route for the transportation of students in any of the grade levels prekindergarten through grade five to and from any school included in a school closure, consolidation or new construction project approved after the first day of July, two
thousand eight, which exceeds by more than fifteen minutes
the recommended duration of the one-way school bus
transportation time for elementary students adopted by the
state board in accordance with subsection (a) of this section
unless:

(1) The county board adopts a separate motion to approve
creation of the route and request written permission of the
state board to create the route; and

(2) Receives the written permission of the state board to
create the route.

(c) A county board may not create, nor may the state
board permit, the creation of a new bus route for the
transportation of students in any of the grade levels
prekindergarten through grade five to and from any school
included in a school closure, consolidation or new
construction project approved after the first day of July, two
thousand eight, which exceeds by more than thirty minutes
the recommended duration of the one-way school bus
transportation time for elementary students adopted by the
state board in accordance with subsection (a) of this section.

(d) The state board shall provide technical assistance to
county boards with the objective of achieving school bus
transportation routes for students which are within the
recommended time durations established by the state board.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major
improvement plans; guidelines for modifications and updates, etc.;
guidelines for project evaluation; submission of certified list of projects to
be funded; department on-site inspection of facilities; enforcement of
required changes or additions to project plans.

For the purposes of this article, unless a different meaning clearly appears from the context:

(1) "Authority" means the School Building Authority of West Virginia;

(2) "Bonds" means bonds issued by the authority pursuant to this article;

(3) "Construction project" means a project in the furtherance of a facilities plan with a cost greater than one million dollars for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including:

(A) The acquisition of land for current or future use in connection with the construction project;

(B) New or substantial upgrading of existing equipment, machinery and furnishings;

(C) Installation of utilities and other similar items related to making the construction project operational.

(D) Construction project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project;

*CLERK'S NOTE: This section was also amended by SB 297 (Chapter 79), which passed prior to this act.
(4) "Cost of project" means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items related to making the project operational; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

(5) "Facilities plan" means the ten-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article that:

(A) Addresses the existing school facilities and facility needs of the county to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board;

(B) Best serves the needs of individual students, the general school population and the communities served by the facilities, including, but not limited to, providing for a facility infrastructure that avoids excessive school bus transportation times for students consistent with sound educational policy and within the budgetary constraints for staffing and operating the schools of the county;

(C) Includes the school major improvement plan;

(D) Includes the county board’s school access safety plan required by section three, article nine-f of this chapter;

(E) Is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and
(F) Is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

(6) "Project" means a construction project or a major improvement project;

(7) "Region" means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;

(8) "Revenue" or "revenues" means moneys:

(A) Deposited in the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

(C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code;

(D) Deposited in the School Major Improvement Fund pursuant to section thirty, article fifteen, chapter eleven of this code;

(E) Received, directly or indirectly, from any source for use in any project completed pursuant to this article;

(F) Received by the authority for the purposes of this article; and
(G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code.

(9) "School major improvement plan" means a ten-year school maintenance plan that:

(A) Is prepared by a county board in accordance with the guidelines established by the authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is prepared by the state board or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project;

(B) Addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;

(C) Includes a projected repair and replacement schedule for all school facilities of the county or of entity seeking funding;

(D) Addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and

(E) Is required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and

(10) "School major improvement project" means a project with a cost greater than fifty thousand dollars and less than one million dollars for the renovation, expansion, repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other
similar items related to the renovation, repair or upgrading in the furtherance of a school major improvement plan. A major improvement project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; or other items which are customarily considered to result in a current or ordinary course of business operating charge.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

(a) The authority shall establish guidelines and procedures to promote the intent and purposes of this article and assure the prudent and resourceful expenditure of state funds for projects under this article including, but not limited to, the following:

(1) Guidelines and procedures for the facilities plans, school major improvement plans and projects submitted in the furtherance of the plans that address, but are not limited to, the following:

(A) All of the elements of the respective plans as defined in section two of this article;

(B) The procedures for a county to submit a preliminary plan, a plan outline or a proposal for a plan to the authority prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a plan shall be the basis for a consultation meeting between representatives of the county
and members of the authority, including at least one citizen member, which shall be held promptly following submission of the preliminary plan, plan outline or proposal for a plan to assure understanding of the general goals of this article and the objective criteria by which projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and to assure efficiency and productivity in the project approval process;

(C) The manner, time line and process for the submission of each plan and annual plan updates to the authority;

(D) The requirements for public hearings, comments or other means of providing broad-based input on plans and projects under this article within a reasonable time period as the authority may consider appropriate. The submission of each plan must be accompanied by a synopsis of all comments received and a formal comment by the county board, the state board or the administrative council of an area vocational educational center submitting the plan;

(E) Any project specifications and maintenance specifications considered appropriate by the authority including, but not limited to, such matters as energy efficiency, preferred siting, construction materials, maintenance plan and any other matter related to how the project is to proceed;

(F) A prioritization by the county board, the state board or the administrative council submitting the plan of each project contained in the plan. In prioritizing the projects, the county board, the state board or the administrative council submitting the plan shall make determinations in accordance with the objective criteria formulated by the School Building Authority in accordance with this section. The priority list is one of the criteria that shall be considered by the authority deciding how the available funds should be expended;
(G) The objective means to be set forth in the plan and used in evaluating implementation of the overall plan and each project included in the plan. The evaluation must measure how the plan addresses the goals of this article and any guidelines adopted under this article, and how each project is in furtherance of the facilities plan and school major improvement plan, as applicable, as well as the importance of the project to the overall success of the facilities plan or school major improvement plan and the overall goals of the authority; and

(H) Any other matters considered by the authority to be important reflections of how a construction project or a major improvement project or projects will further the overall goals of this article.

(2) Guidelines and procedures which may be adopted by the authority for requiring that a county board modify, update, supplement or otherwise submit changes or additions to an approved facilities plan or for requiring that a county board, the state board or the administrative council of an area vocational educational center modify, update, supplement or otherwise submit changes or additions to an approved school major improvement plan. The authority shall provide reasonable notification and sufficient time for the change or addition as delineated in guidelines developed by the authority. The guidelines shall require an update of the estimated duration of school bus transportation times for students associated with any construction project under consideration by the authority that includes the closure, consolidation or construction of a school or schools.

(3) Guidelines and procedures for evaluating project proposals that are submitted to the authority that address, but are not limited to, the following:

(A) Any project funded by the authority must be in furtherance of the facilities plan or school major
improvement plan and in compliance with the guidelines established by the authority;

(B) If a project is to benefit more than one county in the region, the facilities plan must state the manner in which the cost and funding of the project will be apportioned among the counties;

(C) If a county board proposes to finance a construction project through a lease with an option to purchase pursuant to an investment contract as described in subsection (f), section fifteen of this article, the specifications for the project must include the term of the lease, the amount of each lease payment, including the payment due upon exercise of the option to purchase, and the terms and conditions of the proposed investment contract; and

(D) The objective criteria for the evaluation of projects which shall include, but are not limited to, the following:

(i) How the current facilities do not meet and how the plan and any project under the plan meets the following:

(I) Student health and safety including, but not limited to, critical health and safety needs;

(II) Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility use and pupil-teacher ratios;

(III) Reasonable travel time and practical means of addressing other demographic considerations. The authority may not approve a project after the first day of July, two thousand eight, that includes a school closure, consolidation or new construction for which a new bus route will be created for the transportation of students in any of the grade levels prekindergarten through grade five to and from any school
included in the project, which new bus route exceeds by more than fifteen minutes the recommended duration of the one-way school bus transportation time for elementary students adopted by the state board as provided in section five-d, article two-e of this chapter, unless the county has received the written permission of the state board to create the route in accordance with said section five-d;

(IV) Multicounty and regional planning to achieve the most effective and efficient instructional delivery system;

(V) Curriculum improvement and diversification, including the use of instructional technology, distance learning and access to advanced courses in science, mathematics, language arts and social studies;

(VI) Innovations in education;

(VII) Adequate space for projected student enrollments;

(VIII) The history of efforts taken by the county board to propose or adopt local school bond issues or special levies to the extent Constitutionally permissible; and

(IX) Regularly scheduled preventive maintenance; and

(ii) How the project will assure the prudent and resourceful expenditure of state funds and achieve the purposes of this article for constructing, expanding, renovating or otherwise improving and maintaining school facilities for a thorough and efficient education.

(4) Guidelines and procedures for evaluating projects for funding that address, but are not limited to, the following:

(A) Requiring each county board's facilities plan and school major improvement plan to prioritize all the
142 construction projects or major improvement projects, respectively, within the county. A school major
143 improvement plan submitted by the state board or the administrative council of an area vocational educational center shall prioritize all the school improvement projects contained in the plan. The priority list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, the county board, the state board or the administrative council submitting a plan shall make determinations in accordance with the objective criteria formulated by the School Building Authority;

154 (B) The return to each county submitting a project proposal an explanation of the evaluative factors underlying the decision of the authority to fund or not to fund the project; and

158 (C) The allocation and expenditure of funds in accordance with this article, subject to the availability of funds.

161 (b) Prior to final action on approving projects for funding under this article, the authority shall submit a certified list of the projects to the Joint Committee on Government and Finance.

165 (c) The State Department of Education shall conduct on-site inspections, at least annually, of all facilities which have been funded wholly or in part by moneys from the authority or state board to ensure compliance with the county board's facilities plan and school major improvement plan as related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and to otherwise extend the useful life of the facilities: Provided, That the state board shall submit reports regarding its on-site inspections of facilities to the authority within thirty days of completion of
the on-site inspections: Provided, however, That the state board shall promulgate rules regarding the on-site inspections and matters relating thereto, in consultation with the authority, as soon as practical and shall submit proposed rules for legislative review no later than the first day of December, one thousand nine hundred ninety-four.

(d) Based on its on-site inspection or notification by the authority to the state board that the changes or additions to a county's board facilities plan or school major improvement plan required by the authority have not been implemented within the time period prescribed by the authority, the state board shall restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in section nine, article nine-a of this chapter.

CHAPTER 193

(H.B. 4465 - By Delegates Webster, Stemple, Kessler, Hrutkay, Guthrie, Sobonya, Longstreth, Varner, Burdiss, Azinger and Schadler)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §59-1-2 of the Code of West Virginia, 1931, as amended, relating to creating a special revenue account; redirecting certain fees into the account; providing purposes for the expenditure of certain fee collections; continuing the prepaid fees and services account in the Secretary of State's office; assets in account not public funds; and purpose of account.
Be it enacted by the Legislature of West Virginia:

That §59-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

*§59-1-2. Fees to be charged by Secretary of State.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement of business entities organized within the state, as follows:

(A) Articles of incorporation of for-profit corporation .................. $50.00

(B) Articles of incorporation of nonprofit corporation .................. 25.00

(C) Articles of organization of limited liability company ............. 100.00

(D) Agreement of a general partnership .............. 50.00

*Clerk's Note: This section was also amended by HB 4421 (Chapter 212), which passed prior to this act.
19  (E) Certificate of a limited partnership ........ 100.00
20  (F) Agreement of a voluntary association ....... 50.00
21  (G) Articles of organization of a business trust .. 50.00
22  (H) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax ............ 25.00
25  (I) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company or of certificate of limited partnership or agreement of voluntary association ............ 25.00
30  (J) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust ........ $25.00
35  (K) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law ............................... 25.00
39  (L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts ........ 25.00
43  (M) Plus for each additional party to the merger in excess of two ........................................ 15.00
45  (N) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the
cost of filing the appropriate documents to organize the surviving entity ....... 25.00

(O) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership ................. 25.00

(P) Revocation of voluntary dissolution of a corporation, voluntary association or business trust ............ 15.00

(Q) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership ....... 25.00

(R) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution ................................ $25.00

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

(A) Certificate of authority of for-profit corporation ........................................ 100.00

(B) Certificate of authority of nonprofit corporation ........................................ 50.00

(C) Certificate of authority of foreign limited liability companies ........................ 150.00

(D) Certificate of exemption from certificate of authority ................................ 25.00

(E) Registration of a general partnership ........ 50.00
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Fee</th>
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<tbody>
<tr>
<td>75</td>
<td>(F) Registration of a limited partnership</td>
<td>150.00</td>
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<tr>
<td>76</td>
<td>(G) Registration of a limited liability partnership for two-year term</td>
<td>500.00</td>
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<td>78</td>
<td>(H) Registration of a voluntary association</td>
<td>50.00</td>
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<tr>
<td>79</td>
<td>(I) Registration of a trust or business trust</td>
<td>50.00</td>
</tr>
<tr>
<td>80</td>
<td>(J) Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax</td>
<td>$25.00</td>
</tr>
<tr>
<td>84</td>
<td>(K) Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust</td>
<td>25.00</td>
</tr>
<tr>
<td>88</td>
<td>(L) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any foreign business entity as permitted by law</td>
<td>25.00</td>
</tr>
<tr>
<td>92</td>
<td>(M) Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust</td>
<td>25.00</td>
</tr>
<tr>
<td>97</td>
<td>(N) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts</td>
<td>25.00</td>
</tr>
<tr>
<td>101</td>
<td>(O) Plus for each additional party to the merger in excess of two</td>
<td>5.00</td>
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</tbody>
</table>
160 (D) For acceptance, indexing and recordation of service
161 of process any corporation, limited partnership, limited
162 liability partnership, limited liability company, voluntary
163 association, business trust, insurance company, person or
164 other entity as permitted by law ................... 15.00

165 (E) For shipping and handling expenses for execution of
166 service of process by certified mail upon any defendant
167 within the United States, which fee is to be deposited to the
168 special revenue account established in this section for the
169 operation of the office of the Secretary of State ...... $5.00

170 (F) For shipping and handling expenses for execution of
171 service of process upon any defendant outside the United
172 States by registered mail, which fee is to be deposited to the
173 special revenue account established in this section for the
174 operation of the office of the Secretary of State ...... 15.00

175 (7) For a search of records of the office conducted by
176 employees of or at the expense of the Secretary of State upon
177 request, as follows:

178 (A) For any search of archival records maintained at sites
179 other than the office of the Secretary of State
180 .................................................. no less than 10.00

181 (B) For searches of archival records maintained at sites
182 other than the office of the Secretary of State which require
183 more than one hour, for each hour or fraction of an hour
184 consumed in making such search ................... 10.00

185 (C) For any search of records maintained on site for the
186 purpose of obtaining copies of documents or printouts of data
187 ................................................... 5.00
(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor any actual cost, but not less than $25.00

(E) The cost of the search is in addition to the cost of any copies or printouts prepared or any certificate issued pursuant to or based on the search.

(F) For recording any paper for which no specific fee is prescribed ........................................... $5.00

(G) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:

(A) For a copy of any paper or printout of electronic data, if one sheet ........................................... $1.00

(B) For each sheet after the first ......................... .50

(C) For sending the copies or lists by fax transmission .......................... 5.00

(D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the Secretary of State at a rate approximating 2.00 plus .10 per page and rounded to the nearest dollar.

(E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available printed format, plus, for each required disk, which shall be provided by the Secretary of State .......................... 5.00

(b) The Secretary of State may propose legislative rules for promulgation for charges for on-line electronic access to
database information or other information maintained by the Secretary of State.

(c) For any other work or service not enumerated in this subsection, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.

(d) The records maintained by the Secretary of State are prepared and indexed at the expense of the state and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

(e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.

(f) There is hereby continued in the State Treasury a special revenue account to be known as the “service fees and collections” account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Notwithstanding any other provision of this code to the contrary, except as provided in subsection (h) of this section and section two-a of this article, one half of all the fees and service charges established in the following sections and for the following purposes shall be deposited by the Secretary of State or other collecting agency to that special revenue account and used for the operation of the office of the Secretary of State:
(1) The annual attorney-in-fact fee for corporations and limited partnerships established in section five, article twelve-c, chapter eleven of this code;

(2) The fees received for the sale of the State Register, code of state rules and other copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of this code;

(3) The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and professional solicitations established in sections five, nine and fifteen-b, article nineteen, chapter twenty-nine of this code;

(4) The annual attorney-in-fact fee for limited liability companies as designated in section one hundred eight, article one, chapter thirty-one-b of this code and established in section two hundred eleven, article two of said chapter: Provided, That after the thirtieth day of June, two thousand eight, the annual report fees designated in section one hundred eight, article one, chapter thirty-one-b of this code shall upon collection be deposited in the general administrative fees account described in subsection (h) of this section;

(5) The filing fees and search and copying fees for uniform commercial code transactions established by section five hundred twenty-five, article nine, chapter forty-six of this code;

(6) The annual attorney-in-fact fee for licensed insurers established in section twelve, article four, chapter thirty-three of this code;

(7) The fees for the application and record maintenance of all notaries public established by section one hundred seven, article one, chapter twenty-nine-c of this code;
(8) The fees for the application and record maintenance of commissioners for West Virginia as established by section twelve, article four, chapter twenty-nine of this code;

(9) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;

(10) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(11) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;

(12) All fees for services, the sale of photocopies and data maintained at the expense of the Secretary of State as provided in this section; and

(13) All registration, license and other fees collected by the Secretary of State not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds five hundred thousand dollars as of the thirtieth day of June, two thousand three, and each year thereafter, shall be expired to the state fund, General Revenue Fund.

(h)(1) Effective the first day of July, two thousand eight, there is hereby created in the State Treasury a special revenue account to be known as the general administrative fees account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter
twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand nine, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall not revert to the general revenue fund but shall remain in the fund and be expended as provided by this subsection.

(2) After the thirtieth day of June, two thousand eight, all the fees and service charges established in section two-a of this article for the following purposes shall be collected and deposited by the Secretary of State or other collecting agency in the general administrative fees account and used for the operation of the office of the Secretary of State:

(A) The annual report fees paid to the Secretary of State by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies;

(B) The fees for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a) of this section; and

(C) The fees for the purchase of date and updates related to the State’s Business Organizations Database described in section two-a of this article.

(i) There is continued in the office of the Secretary of State a noninterest bearing, escrow account to be known as the “prepaid fees and services account”. This account shall be for the purpose of allowing customers of the Secretary of State to prepay for services, with payment to be held in escrow until services are rendered. Payments deposited in the account shall remain in the account until services are rendered.
rendered by the Secretary of State and at that time the fees
will be reallocated to the appropriate general or special
revenue accounts. There shall be no fee charged by the
secretary of state to the customer for the use of this account
and the customer may request the return of any moneys
maintained in the account at any time without penalty. The
assets of the prepaid fees and services account do not
constitute public funds of the state and are available solely
for carrying out the purposes of this section.

CHAPTER 194

(Com. Sub. for H.B. 4617 - By Delegates Webster, Proudfoot,
Stemple and Ellem)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §31B-1-111 of the Code of West
Virginia, 1931, as amended; to amend and reenact §31D-5-504
of said code; to amend and reenact §31D-15-1510 of said code;
to amend and reenact §31E-5-504 of said code; to amend and
reenact §31E-14-1410 of said code; to amend and reenact
§46A-2-137 of said code; to amend and reenact §47-9-4 of said
code; and to amend and reenact §56-3-31 and §56-3-33 of said
code, all relating to service of process; service on corporation
for-profit; service on corporation nonprofit; service on foreign
corporation; service of process on certain nonresidents;
constituting the Secretary of State as attorney-in-fact for all
limited partnerships; service of process against nonresidents
involved in motor vehicle accidents; service of process against
nonresidents having certain contracts with this state.

Be it enacted by the Legislature of West Virginia:
That §31B-1-111 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31D-5-504 of said code be amended and reenacted; that §31D-15-1510 of said code be amended and reenacted; that §31E-5-504 of said code be amended and reenacted; that §31E-14-1410 of said code be amended and reenacted; that §46A-2-137 of said code be amended and reenacted; that §47-9-4 of said code be amended and reenacted; and that §56-3-31 and §56-3-33 of said code be amended and reenacted, all to read as follows:

Chapter
31D. West Virginia Business Corporation Act.
31E. West Virginia Nonprofit Corporation Act.
46A. West Virginia Consumer Credit and Protection Act.
47. Regulation of Trade.
56. Pleading and Practice.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-111. Service of process.

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the Secretary of State is an agent of the company upon whom process, notice or demand may be served.
(c) Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State, the assistant Secretary of State or clerk having charge of the limited liability company department of the Secretary of State, the original process, notice or demand and two copies thereof for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. No process, notice or demand may be served on or accepted by the Secretary of State less than ten days before the return day thereof. The Secretary of State, upon being served with or accepting any process, notice or demand, shall: (1) File in his or her office a copy of the process, notice or demand, endorsed as of the time of service or acceptance; and (2) transmit one copy of the process, notice or demand by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to the limited liability company’s registered agent: Provided, That if there is no registered agent, then to the individual whose name and address was last given to the Secretary of State's office as the person designated to receive process, notice or demand. If no person has been named, then to the principal office of the limited liability company at the address last given to the Secretary of State's office and if no address is available on record with the Secretary of State then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk’s office of the court from which the process, notice or demand was issued. Such service or acceptance of process, notice or demand is sufficient if the return receipt is signed by an agent or employee of such company, or the registered or certified mail so sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, showing the stamp of the United States postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and
acceptance of electronic return receipts. After receiving verification from the United States postal service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service the Secretary of State shall return refused or undeliverable mail to the clerk’s office of the court from which the process, notice or demand was issued. No process, notice or demand may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) The Secretary of State shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

Article 5. Office and Agent.

§31D-5-504. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.
(b) If a corporation has no registered agent, or the agent
cannot with reasonable diligence be served, the corporation
may be served by registered or certified mail, return receipt
requested, addressed to the secretary of the corporation at its
principal office. Service is perfected under this subsection at
the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on
behalf of the corporation; or

(3) Five days after its deposit in the United States mail, as
evidenced by the postmark, if mailed postpaid and correctly
addressed.

(c) In addition to the methods of service on a corporation
provided in subsections (a) and (b) of this section, the
Secretary of State is hereby constituted the attorney-in-fact
for and on behalf of each corporation created pursuant to the
provisions of this chapter. The Secretary of State has the
authority to accept service of notice and process on behalf of
each corporation and is an agent of the corporation upon
whom service of notice and process may be made in this state
for and upon each corporation. No act of a corporation
appointing the Secretary of State as attorney-in-fact is
necessary. Service of any process, notice or demand on the
Secretary of State may be made by delivering to and leaving
with the Secretary of State the original process, notice or
demand and two copies of the process, notice or demand for
each defendant, along with the fee required by section two,
article one, chapter fifty-nine of this code: Provided, That
with regard to a class action suit in which all defendants are
to be served with the same process, notice or demand, service
may be made by filing with the Secretary of State the original
process, notice or demand and one copy for each named
defendant. Immediately after being served with or accepting
any process or notice, the Secretary of State shall: (1) File in
his or her office a copy of the process or notice, endorsed as
of the time of service or acceptance;(2) transmit one copy of
the process or notice by registered or certified mail, return
receipt requested, by a means which may include electronic
issuance and acceptance of electronic return receipts, to: (A)
The corporation's registered agent; or (B) if there is no
registered agent, to the individual whose name and address
was last given to the Secretary of State's office as the person
to whom notice and process are to be sent and if no person
has been named, to the principal office of the corporation as
that address was last given to the Secretary of State's office.
If no address is available on record with the Secretary of
State, then to the address provided on the original process,
notice or demand, if available; and (3) transmit the original
process, notice or demand to the clerk’s office of the court
from which the process, notice or demand was issued.
Service or acceptance of process or notice is sufficient if
return receipt is signed by an agent or employee of the
corporation, or the registered or certified mail sent by the
Secretary of State is refused by the addressee and the
registered or certified mail is returned to the Secretary of
State, or to his or her office, showing the stamp of the United
States postal service that delivery has been refused, and the
return receipt or registered or certified mail is received by the
Secretary of State by a means which may include electronic
issuance and acceptance of electronic return receipts. After
receiving verification from the United States postal service
that acceptance of process, notice or demand has been signed,
the Secretary of State shall notify the clerk’s office of the
court from which the process, notice or demand was issued
by a means which may include electronic notification. If the
process, notice or demand was refused or undeliverable by
the United States postal service the Secretary of State shall
return the refused or undeliverable mail to the clerk’s office
of the court from which the process, notice or demand was
issued. No process or notice may be served on the Secretary
of State or accepted by him or her less than ten days before
the return day of the process or notice. The court may order
continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

ARTICLE 15. FOREIGN CORPORATIONS.


(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation’s agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent return required pursuant to section three, article twelve-c, chapter eleven of this code if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section one thousand five hundred twenty of this article; or

(3) Has had its certificate of authority revoked under section one thousand five hundred thirty-one of this article.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;
(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) In addition to the methods of service on a foreign corporation provided in subsections (a) and (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on behalf of each foreign corporation authorized to do or transact business in this state pursuant to the provisions of this chapter. The Secretary of State has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the Secretary of State as attorney-in-fact is necessary. Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State the original process, notice or demand and one copy of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. Immediately after being served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service or acceptance; (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to: (A) The foreign corporation’s registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the Secretary of State’s office as the person to whom notice and process are to be sent and if no person has been named, to the principal office of the foreign corporation as that address was last given to the Secretary of State’s office. If no address is available on record with the Secretary of
State, then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk’s office of the court from which the process, notice or demand was issued. Service or acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing the stamp of the United States postal service that delivery has been refused, and the return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from United States postal service that acceptance of process, notice or demand has been accepted, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service the Secretary of State shall return the refused or undeliverable mail to the clerk’s office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(e) Any foreign corporation doing or transacting business in this state without having been authorized to do so pursuant to the provisions of this chapter is conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with authority to accept service of notice and process on behalf of the corporation and upon whom service of notice and process may be made in this state for and upon the corporation in any action or proceeding arising from activities described in section one thousand five hundred one
of this article. No act of a corporation appointing the Secretary of State as its attorney-in-fact is necessary. Immediately after being served with or accepting any process or notice, of which process or notice one copy for each defendant are to be furnished to the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his or her office a copy of the process or notice, with a note endorsed of the time of service or acceptance, and transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to the corporation at the address of its principal office, which address shall be stated in the process or notice. The service or acceptance of process or notice is sufficient if the return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the United States postal service that delivery thereof has been refused and the return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States postal service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service the Secretary of State shall return refused or undeliverable mail to the clerk’s office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return date thereof. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.
134 (f) This section does not prescribe the only means, or
135 necessarily the required means, of serving a foreign
136 corporation.

CHAPTER 31E. WEST VIRGINIA NONPROFIT
CORPORATION ACT.

Article
  5. Office and Agent.

ARTICLE 5. OFFICE AND AGENT.

§31E-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's
2 agent for service of process, notice, or demand required or
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent
5 cannot with reasonable diligence be served, the corporation
6 may be served by registered or certified mail, return receipt
7 requested, addressed to the secretary of the corporation at its
8 principal office. Service is perfected under this subsection at
9 the earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on
12 behalf of the corporation; or

13 (3) Five days after its deposit in the United States mail, as
14 evidenced by the postmark, if mailed postpaid and correctly
15 addressed.

16 (c) In addition to the methods of service on a corporation
17 provided in subsections (a) and (b) of this section, the
18 Secretary of State is hereby constituted the attorney-in-fact
for and on behalf of each corporation created pursuant to the
provisions of this chapter. The Secretary of State has the
authority to accept service of notice and process on behalf of
each corporation and is an agent of the corporation upon
whom service of notice and process may be made in this state
for and upon each corporation. No act of a corporation
appointing the Secretary of State as attorney-in-fact is
necessary. Service of any process, notice or demand on the
Secretary of State may be made by delivering to and leaving
with the Secretary of State the original process, notice or
demand and two copies of the process, notice or demand for
each defendant, along with the fee required by section two,
article one, chapter fifty-nine of this code. Immediately after
being served with or accepting any process or notice, the
Secretary of State shall: (1) File in his or her office a copy of
the process or notice, endorsed as of the time of service, or
acceptance; (2) transmit one copy of the process or notice by
registered or certified mail, return receipt requested, by a
means which may include electronic issuance and acceptance
of electronic return receipts, to: (A) The corporation's
registered agent; or (B) if there is no registered agent, to the
individual whose name and address was last given to the
Secretary of State's office as the person to whom notice and
process are to be sent, and if no person has been named, to
the principal office of the corporation as that address was last
given to the Secretary of State's office; and if no address is
available on record with the Secretary of State, then to the
address provided on the original process, notice or demand,
if available; and (3) transmit the original process, notice or
demand to the clerk's office of the court from which the
process, notice or demand was issued. Service or acceptance
of process or notice is sufficient if return receipt is signed by
an agent or employee of the corporation, or the registered or
certified mail sent by the Secretary of State is refused by the
addressee and the registered or certified mail is returned to
the Secretary of State, or to his or her office, showing the
stamp of the United States postal service that delivery has
been refused, and the return receipt or registered or certified
mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States postal service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service, the Secretary of State shall return the refused or undeliverable mail to the clerk’s office from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) This section does not prescribe the only means, or necessarily the required means of serving a corporation.

ARTICLE 14. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

§31E-14-1410. Service on foreign corporation.

(a) The registered agent of a foreign corporation authorized to conduct activities in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent return required pursuant to section three, article
twelve-c, chapter eleven of this code if the foreign

(1) Has no registered agent or its registered agent cannot
with reasonable diligence be served;

(2) Has withdrawn from conducting activities in this state
under section one thousand four hundred twenty of this
article; or

(3) Has had its certificate of authority revoked under
section one thousand four hundred thirty-one of this article.

(c) Service is perfected under subsection (b) of this section
at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on
behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as
evidenced by the postmark, if mailed postpaid and correctly
addressed.

(d) In addition to the methods of service on a foreign
corporation provided in subsections (a) and (b) of this
section, the Secretary of State is hereby constituted the
attorney-in-fact for and on behalf of each foreign corporation
authorized to conduct affairs in this state pursuant to the
provisions of this chapter. The Secretary of State has the
authority to accept service of notice and process on behalf of
each corporation and is an agent of the corporation upon
whom service of notice and process may be made in this state
for and upon each corporation. No act of a corporation
appointing the Secretary of State as attorney-in-fact is
necessary. Service of any process, notice or demand on the
Secretary of State may be made by delivering to and leaving
with the Secretary of State the original process, notice or
demand and two copies of the process, notice or demand for
each defendant, along with the fee required by section two,
article one, chapter fifty-nine of this code. Immediately after
being served with or accepting any process or notice, the
Secretary of State shall: (1) File in his or her office a copy of
the process or notice, endorsed as of the time of service, or
acceptance; (2) transmit one copy of the process or notice by
registered or certified mail, return receipt requested, by a
means which may include electronic issuance and acceptance
of electronic return receipts, to: (A) The foreign corporation's
registered agent; or (B) if there is no registered agent, to the
individual whose name and address was last given to the
Secretary of State's office as the person to whom notice and
process are to be sent, and if no person has been named, to
the principal office of the foreign corporation as that address
was last given to the Secretary of State's office. If no address
is available on record with the Secretary of State, then to the
address provided on the original process, notice or demand,
if available; and (3) transmit the original process, notice or
demand to the clerk’s office of the court from which the
process, notice or demand was issued. Service or acceptance
of process or notice is sufficient if return receipt is signed by
an agent or employee of the corporation, or the registered or
certified mail sent by the Secretary of State is refused by the
addressee and the registered or certified mail is returned to
the Secretary of State, or to his or her office, showing the
stamp of the United States postal service that delivery has
been refused, and the return receipt or registered or certified
mail is received by the Secretary of State by a means which
may include electronic issuance and acceptance of electronic
return receipts. After receiving verification from United
States postal service that acceptance of process, notice or
demand has been accepted, the Secretary of State shall notify
the clerk’s office of the court from which the process, notice
or demand was issued by means which may include
electronic notification. If the process, notice or demand was
refused or undeliverable by the United States postal service
the Secretary of State shall return the refused or
undeliverable mail to the clerk’s office of the court from
which the process, notice or demand was issued. No process
or notice may be served on the Secretary of State or accepted
by him or her less than ten days before the return day of the
process or notice. The court may order continuances as may
be reasonable to afford each defendant opportunity to defend
the action or proceedings.

(e) Any foreign corporation conducting affairs in this state
without having been authorized to do so pursuant to the
provisions of this chapter is conclusively presumed to have
appointed the Secretary of State as its attorney-in-fact with
authority to accept service of notice and process on behalf of
the corporation and upon whom service of notice and process
may be made in this state for and upon the corporation in any
action or proceeding arising from activities described in
section one thousand four hundred one of this article. No act
of a corporation appointing the Secretary of State as its
attorney-in-fact is necessary. Immediately after being served
with or accepting any process or notice, of which process or
notice two copies for each defendant are to be furnished to
the Secretary of State with the original notice or process,
 together with the fee required by section two, article one,
chapter fifty-nine of this code, the Secretary of State shall file
in his or her office a copy of the process or notice, with a
note endorsed of the time of service or acceptance, and
transmit one copy of the process or notice by registered or
certified mail, return receipt requested, by a means which
may include electronic issuance and acceptance of electronic
return receipts, to the corporation at the address of its
principal office, which address shall be stated in the process
or notice. The service or acceptance of process or notice is
sufficient if the return receipt is signed by an agent or
employee of the corporation, or the registered or certified
mail sent by the Secretary of State is refused by the addressee
and the registered or certified mail is returned to the
Secretary of State, or to his or her office, showing thereon the stamp of the United States postal service that delivery thereof has been refused, and the return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States postal service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service the Secretary of State shall return refused or undeliverable mail to the clerk’s office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return date thereof. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(f) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-137. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation authorized to do business in this state pursuant to the provisions of chapter thirty-one of this code, who takes or holds any negotiable instrument, nonnegotiable instrument, or contract or other writing, arising from a consumer credit sale or consumer lease which is subject to the provisions of
this article, other than a sale or lease primarily for an
agricultural purpose, or who is a lender subject to the
provisions of section one hundred three of this article, shall
be conclusively presumed to have appointed the Secretary of
State as his attorney-in-fact with authority to accept service
of notice and process in any action or proceeding brought
against him arising out of such consumer credit sale,
consumer lease or consumer loan. A person shall be
considered a nonresident hereunder if he is a nonresident at
the time such service of notice and process is sought. No act
of such person appointing the Secretary of State shall be
necessary. Immediately after being served with or accepting
any such process or notice, of which process or notice two
copies for each defendant shall be furnished the Secretary of
State with the original notice or process, together with the fee
required by section two, article one, chapter fifty-nine of this
code, the Secretary of State shall file in his office a copy of
such process or notice, with a note thereon endorsed of the
time of service or acceptance, as the case may be, and
transmit one copy of such process or notice by registered or
certified mail, return receipt requested, by a means which
may include electronic issuance and acceptance of electronic
return receipts, to such person at his address, which address
shall be stated in such process or notice: Provided, That after
receiving verification from the United States postal service
that acceptance of process or notice has been signed, the
Secretary of State shall notify the clerk’s office of the court
from which the process or notice was issued by a means
which may include electronic notification. If the process or
notice was refused or undeliverable by the United States
postal service the Secretary of State shall return refused or
undeliverable mail to the clerk’s office of the court from
which the process or notice was issued. But no process or
notice shall be served on the Secretary of State or accepted
fewer than ten days before the return date thereof. The court
may order such continuances as may be reasonable to afford
each defendant opportunity to defend the action or proceeding.
The provisions for service of process or notice herein are cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process or notice in such action served in any other mode and manner provided by law.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of State constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon Secretary of State; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

The Secretary of State is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing the Secretary of State such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested,
to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law, or if no address is available on record with the Secretary of State then to the address provided on the original process or process, if available. No process or notice shall be served on the Secretary of State or accepted by him less than ten days before the return day thereof. Such limited partnership shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the Secretary of State as its attorney-in-fact.

Any foreign limited partnership which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with authority to accept service of notice and process on behalf of such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership in any action or proceeding described in the next following paragraph of this section. No act of such limited partnership appointing the Secretary of State as such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested,
by a means which may include electronic issuance and acceptance of electronic return receipts, to such limited partnership at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such limited partnership. After receiving verification from the United States postal service that acceptance of process or notice has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process or notice was issued by a means which may include electronic notification. If the process or notice was refused or undeliverable by the United States postal service the Secretary of State shall return refused or undeliverable mail to the clerk’s office of the court from which the process or notice was issued. No process or notice shall be served on the Secretary of State or accepted by him less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings. For the purpose of this section, a foreign limited partnership not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein (a) if such limited partnership makes a contract to be performed, in whole or in part, by any party thereto in this state, (b) if such limited partnership commits a tort, in whole or in part, in this state, or (c) if such limited partnership manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such limited partnership had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as herein above described shall be deemed to be the agreement of such limited partnership that any notice or process served upon, or
accepted by, the Secretary of State pursuant to the next preceding paragraph of this section in any action or proceeding against such limited partnership arising from or growing out of such contract, tort or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.

§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.

(a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road or highway of this state, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state arising out of any accident or collision occurring in the State of West Virginia in which the nonresident was involved: Provided, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident motorist shall be considered to have appointed as his or her agent or attorney-in-fact any insurance company which has
a contract of automobile or liability insurance with the nonresident defendant.

(b) For purposes of service of process as provided in this section, every insurance company shall be considered the agent or attorney-in-fact of every nonresident motorist insured by that company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as provided in this section, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident operating a motor vehicle in this state, either personally or through an agent, is considered to acknowledge the appointment of the Secretary of State, or, as the case may be, his or her automobile insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is considered to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner provided in this section, shall be of the same legal force and validity as though the nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of any nonresident who dies during or subsequent to an accident or collision resulting from the operation of a motor vehicle in this state by the nonresident or his or her duly authorized agent.

(d) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the
summons and complaint, together with the bond certificate of
the clerk, and the fee required by section two, article one,
chapter fifty-nine of this code with the Secretary of State, or
in his or her office, and the service shall be sufficient upon
the nonresident defendant or, if a natural person, his or her
administrator, administratrix, executor or executrix: 
Provided, That notice of service and a copy of the summons
and complaint shall be sent by registered or certified mail,
return receipt requested, by a means which may include
electronic issuance and acceptance of electronic return
receipts, by the Secretary of State to the nonresident
defendant. After receiving verification from the United
States postal service that acceptance of process, notice or
demand has been signed, the Secretary of State shall notify
the clerk's office of the court from which the process, notice
or demand was issued by a means which may include
electronic notification. If the process, notice or demand was
refused or undeliverable by the United States postal service
the Secretary of State shall return refused or undeliverable
mail to the clerk’s office of the court from which the process,
notice or demand was issued. The court may order any
reasonable continuances to afford the defendant opportunity
to defend the action.

(e) The fee remitted to the Secretary of State at the time
of service shall be taxed in the costs of the proceeding. The
Secretary of State shall keep a record in his or her office of
all service of process and the day and hour of service of
process.

(f) In the event service of process upon a nonresident
defendant cannot be effected through the Secretary of State
as provided by this section, service may be made upon the
defendant's insurance company. The plaintiff shall file with
the clerk of the circuit court an affidavit alleging that the
defendant is not a resident of this state; that process directed
to the Secretary of State was sent by registered or certified
mail, return receipt requested; that the registered or certified
mail was returned to the office of the Secretary of State showing the stamp of the post office department that delivery was refused or that the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (d) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(g) The following words and phrases, when used in this article, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes, among others, a person who operates a motor vehicle in this state for a nonresident as defined in this section and chapter, in pursuit of business, pleasure or otherwise, or who comes into this state and operates a motor vehicle for, or with the knowledge or acquiescence of, a nonresident; and includes, among others, a member of the family of the nonresident or a person who, at the residence, place of business or post office of the nonresident, usually receives and acknowledges receipt for mail addressed to the nonresident.

(2) "Motor vehicle" means and includes any self-propelled vehicle, including a motorcycle, tractor and trailer, not operated exclusively upon stationary tracks.

(3) "Nonresident" means any person who is not a resident of this state or a resident who has moved from the state subsequent to an accident or collision and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to an accident or collision.
(4) "Nonresident plaintiff or plaintiffs" means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) "Nonresident defendant or defendants" means a nonresident motorist who, either personally or through his or her agent, operated a motor vehicle on a public street, highway or road in this state and was involved in an accident or collision which has given rise to a civil action filed in any court in this state.

(6) "Street", "road" or "highway" means the entire width between property lines of every way or place of whatever nature when any part of the street, road or highway is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(7) "Insurance company" means any firm, corporation, partnership or other organization which issues automobile insurance.

(h) The provision for service of process in this section is cumulative and nothing contained in this section shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

(a) The engaging by a nonresident, or by his or her duly authorized agent, in any one or more of the acts specified in subdivisions (1) through (7) of this subsection shall be
deemed equivalent to an appointment by such nonresident of
the Secretary of State, or his or her successor in office, to be
his or her true and lawful attorney upon whom may be served
all lawful process in any action or proceeding against him or
her, in any circuit court in this state, including an action or
proceeding brought by a nonresident plaintiff or plaintiffs, for
a cause of action arising from or growing out of such act or
acts, and the engaging in such act or acts shall be a
signification of such nonresident's agreement that any such
process against him or her, which is served in the manner
hereinafter provided, shall be of the same legal force and
validity as though such nonresident were personally served
with a summons and complaint within this state:

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;

(3) Causing tortious injury by an act or omission in this
state;

(4) Causing tortious injury in this state by an act or
omission outside this state if he or she regularly does or
solicits business, or engages in any other persistent course of
conduct, or derives substantial revenue from goods used or
consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of
warranty expressly or impliedly made in the sale of goods
outside this state when he or she might reasonably have
expected such person to use, consume or be affected by the
goods in this state: Provided, That he or she also regularly
does or solicits business, or engages in any other persistent
course of conduct, or derives substantial revenue from goods
used or consumed or services rendered in this state;

(6) Having an interest in, using or possessing real
property in this state; or
(7) Contracting to insure any person, property or risk located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), subsection (a) of this section may be asserted against him or her.

(c) Service shall be made by leaving the original and two copies of both the summons and the complaint, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the defendant at his or her nonresident address and the defendant's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States postal service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service the Secretary of State shall return refused or undeliverable mail to the clerk’s office of the court from which the process, notice or demand was issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service,
judgment by default may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.

(d) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the action or proceeding. The Secretary of State shall keep a record in his or her office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) "Nonresident" means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership or corporation or a firm, partnership or corporation which has moved from this state subsequent to any of said such act or acts.

(3) "Nonresident plaintiff or plaintiffs" means a nonresident of this state who institutes an action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this state pursuant to the provisions of this section.
(f) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action or proceeding from having process in such action served in any other mode or manner provided by the law of this state or by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(g) This section shall not be retroactive and the provisions hereof shall not be available to a plaintiff in a cause of action arising from or growing out of any of said acts occurring prior to the effective date of this section.

CHAPTER 195

(Com. Sub. for H.B. 4383 - By Delegates Stemple, Williams, Webster, Shaver, Perry and Varner)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-3-32, all relating to fire marshal service weapons; providing for awarding service weapon to any active or retired state fire marshal, a deputy fire marshal or assistant fire marshal; and providing for the sale of service weapon when taken out of service due to routine wear.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-3-32, to read as follows:
ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-32. Awarding service weapon upon retirement of fire marshal or service weapon.

(a) Upon the retirement of a state fire marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the state fire marshal pursuant to section eleven of this article, the State Fire Commission shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the retiring member is retiring honorably with at least twenty years of service; or

(2) The retiring member is retiring with less than twenty years of service based upon a determination that the member is totally physically disabled as a result of his or her service with the state fire marshal.

(b) Notwithstanding the provisions of subsection (a) of this section, the State Fire Commission may not award a service weapon to any member whom the State Fire Commissioner finds to be mentally incapacitated or who constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the fire marshal may offer the service weapon for sale to any active or retired state fire marshal, assistant state fire marshal or deputy state fire marshal, at fair market value, with the proceeds from any sales used to offset the cost of new service weapons. The disposal of service weapons pursuant to this subsection does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.
AN ACT to amend and reenact §29-3D-2 of the Code of West Virginia, 1931, as amended, relating to providing classifications of licensees to be licensed by the State Fire Marshal to engage in fire protection work.

Be it enacted by the Legislature of West Virginia:

That §29-3D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§29-3D-2. Definitions.

1. As used in this article:

2. (a) "Engineered Suppression Systems Installer" means a person certified by a manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.

3. (b) "Engineered Suppression Systems Technician" means a person certified by a manufacturer to maintain or repair an agent suppression system.

4. (c) "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.

(d) "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.

(e) "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.

(f) "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.

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

(h) “Portable Fire Extinguisher Technician” means a person certified in accordance with NFPA 10 to install, maintain, repair and certify portable fire extinguishers as defined by NFPA 10.

(i) “Preengineered Suppression Systems Installer” means a person certified by a manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.
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42 (j) "Preengineered Suppression Systems Technician" means a person certified to maintain or repair an agent suppression system.

45 (k) "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.

CHAPTER 197

(H.B. 4677 - By Delegates White, Stalnaker, Kominar, laquinta and Argento)

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §6-7-2a and §29-6-7 of the Code of West Virginia, 1931, as amended, all relating to the Director of Personnel; clarifying appointment of director; and authorizing that the hiring requirement is education or experience.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a and §29-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

Chapter
29. Miscellaneous Boards and Commissions.
CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

*§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six, and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, Division of Highways, ninety-two thousand five hundred dollars; Commissioner, Division of Corrections, eighty thousand dollars; Director, Division of

*Clerk's Note: This section was also amended by SB 309 (Chapter 198), which passed subsequent to this act.
23 Natural Resources, seventy-five thousand dollars;
24 Superintendent, State Police, eighty-five thousand dollars;
25 Commissioner, Division of Banking, seventy-five thousand
dollars; Commissioner, Division of Culture and History,
sixty-five thousand dollars; Commissioner, Alcohol Beverage
Control Commission, seventy-five thousand dollars;
29 Commissioner, Division of Motor Vehicles, seventy-five
thousand dollars; Chairman, Health Care Authority, eighty
thousand dollars; members, Health Care Authority, seventy
thousand dollars; Director, Human Rights Commission, fifty-
five thousand dollars; Commissioner, Division of Labor,
seventy thousand dollars; Director, Division of Veterans'
Affairs, sixty-five thousand dollars; Chairperson, Board of
Parole, fifty-five thousand dollars; members, Board of Parole,
fifty thousand dollars; members, Employment Security
Review Board, seventeen thousand dollars; and
39 Commissioner, Bureau of Employment Programs, seventy-
five thousand dollars. Secretaries of the departments shall be
paid an annual salary as follows: Health and Human
Resources, ninety-five thousand dollars; Transportation,
ninety-five thousand dollars; Revenue, ninety-five thousand
dollars; Military Affairs and Public Safety, ninety-five
thousand dollars; Administration, ninety-five thousand
dollars; Education and the Arts, ninety-five thousand dollars;
Commerce, ninety-five thousand dollars; and Environmental
Protection, ninety-five thousand dollars: Provided, That any
increase in the salary of any current appointive state officer
named in this subsection pursuant to the reenactment of this
subsection during the regular session of the Legislature in
two thousand six that exceeds five thousand dollars shall be
paid to such officer or his or her successor beginning on the
first day of July, two thousand six, in annual increments of
five thousand dollars per fiscal year, up to the maximum
salary provided in this subsection.

(b) Each of the state officers named in this subsection
shall continue to be appointed in the manner prescribed in
this code and, prior to the first day of July, two thousand six,
each of the state officers named in this subsection shall
continue to receive the annual salaries he or she was
receiving as of the effective date of the enactment of this
section in two thousand six, and shall thereafter,
notwithstanding any other provision of this code to the
contrary, be paid an annual salary as follows:

Director, Board of Risk and Insurance Management,
eighty thousand dollars; Director, Division of Rehabilitation
Services, seventy thousand dollars; Director, Division of
Personnel, seventy thousand dollars; Executive Director,
Educational Broadcasting Authority, seventy-five thousand
dollars; Secretary, Library Commission, seventy-two
thousand dollars; Director, Geological and Economic Survey,
seventy-five thousand dollars; Executive Director,
Prosecuting Attorneys Institute, seventy thousand dollars;
Executive Director, Public Defender Services, seventy
thousand dollars; Commissioner, Bureau of Senior Services,
seventy-five thousand dollars; Director, State Rail Authority,
sixty-five thousand dollars; Executive Director, Women's
Commission, forty-five thousand dollars; Director, Hospital
Finance Authority, thirty-five thousand dollars; member,
Racing Commission, twelve thousand dollars; Chairman,
Public Service Commission, eighty-five thousand dollars;
members, Public Service Commission, eighty-five thousand
dollars; Director, Division of Forestry, seventy-five thousand
dollars; Director, Division of Juvenile Services, eighty
thousand dollars; and Executive Director, Regional Jail and
Correctional Facility Authority, eighty thousand dollars:

Provided, That any increase in the salary of any current
appointive state officer named in this subsection pursuant to
the reenactment of this subsection during the regular session
of the Legislature in two thousand six that exceeds five
thousand dollars shall be paid to such officer or his or her
successor beginning on the first day of July, two thousand
six, in annual increments of five thousand dollars per fiscal
year, up to the maximum salary provided in this subsection.
(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six, and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, ninety-two thousand five hundred dollars; Commissioner, Insurance Commission, ninety-two thousand five hundred dollars; Director, Lottery Commission, ninety-two thousand five hundred dollars; Director, Division of Homeland Security and Emergency Management, sixty-five thousand dollars; and Adjutant General, ninety-two thousand five hundred dollars;

(d) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.
CHAPTER 29. MISCELLANEOUS BOARDS AND COMMISSIONS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

(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 or at least five years of administrative experience in personnel administration. The salary for the director shall be that which is set out in section two-a, article seven, chapter six of this code.

(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 program and the understaffed classifications in state agencies;

(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.

CHAPTER 198

(Com. Sub. for S.B. 309 - By Senators Bowman, Plymale, Oliverio and Sypolt)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to the terms of certain appointed state officers; qualifications; powers and salaries of such officers; and clarifying salary when one person is serving as both the Secretary of Transportation and the Commissioner of Highways.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.
*§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, Division of Highways, ninety-two thousand five hundred dollars; Commissioner, Division of Corrections, eighty thousand dollars; Director, Division of Natural Resources, seventy-five thousand dollars; Superintendent, State Police, eighty-five thousand dollars; Commissioner, Division of Banking, seventy-five thousand dollars; Commissioner, Division of Culture and History, sixty-five thousand dollars; Commissioner, Alcohol Beverage Control Commission, seventy-five thousand dollars;

*Clerk's Note: This section was also amended by HB 4677 (Chapter 197), which passed prior to this act.*
Commissioner, Division of Motor Vehicles, seventy-five thousand dollars; Chairman, Health Care Authority, eighty thousand dollars; members, Health Care Authority, seventy thousand dollars; Director, Human Rights Commission, fifty-five thousand dollars; Commissioner, Division of Labor, seventy thousand dollars; Director, Division of Veterans' Affairs, sixty-five thousand dollars; Chairperson, Board of Parole, fifty-five thousand dollars; members, Board of Parole, fifty thousand dollars; members, Employment Security Review Board, seventeen thousand dollars; and Commissioner, Bureau of Employment Programs, seventy-five thousand dollars. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, ninety-five thousand dollars; Transportation, ninety-five thousand dollars: Provided, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid one hundred twenty thousand dollars; Revenue, ninety-five thousand dollars; Military Affairs and Public Safety, ninety-five thousand dollars; Administration, ninety-five thousand dollars; Education and the Arts, ninety-five thousand dollars; Commerce, ninety-five thousand dollars; and Environmental Protection, ninety-five thousand dollars: Provided, however, That any increase in the salary of any current appointive state officer named in this subsection pursuant to the reenactment of this subsection during the regular session of the Legislature in two thousand six that exceeds five thousand dollars shall be paid to such officer or his or her successor beginning on the first day of July, two thousand six, in annual increments of five thousand dollars per fiscal year, up to the maximum salary provided in this subsection: Provided further, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, then the annual increments of five thousand dollars per fiscal year do not apply.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in
this code and, prior to the first day of July, two thousand six,
each of the state officers named in this subsection shall
continue to receive the annual salaries he or she was
receiving as of the effective date of the enactment of this
section in two thousand six and shall thereafter,
notwithstanding any other provision of this code to the
contrary, be paid an annual salary as follows:

Director, Board of Risk and Insurance Management,
eighty thousand dollars; Director, Division of Rehabilitation
Services, seventy thousand dollars; Director, Division of
Personnel, seventy thousand dollars; Executive Director,
Educational Broadcasting Authority, seventy-five thousand
doors; Secretary, Library Commission, seventy-two
thousand dollars; Director, Geological and Economic Survey,
seventy-five thousand dollars; Executive Director,
Prosecuting Attorneys Institute, seventy thousand dollars;
Executive Director, Public Defender Services, seventy
thousand dollars; Commissioner, Bureau of Senior Services,
seventy-five thousand dollars; Director, State Rail Authority,
sixty-five thousand dollars; Executive Director, Women's
Commission, forty-five thousand dollars; Director, Hospital
Finance Authority, thirty-five thousand dollars; member,
Racing Commission, twelve thousand dollars; Chairman,
Public Service Commission, eighty-five thousand dollars;
members, Public Service Commission, eighty-five thousand
doors; Director, Division of Forestry, seventy-five thousand
doors; Director, Division of Juvenile Services, eighty
thousand dollars; and Executive Director, Regional Jail and
Correctional Facility Authority, eighty thousand dollars.

Provided, That any increase in the salary of any current
appointive state officer named in this subsection pursuant to
the reenactment of this subsection during the regular session
of the Legislature in two thousand six that exceeds five
thousand dollars shall be paid to such officer or his or her
successor beginning on the first day of July, two thousand
six, in annual increments of five thousand dollars per fiscal
year, up to the maximum salary provided in this subsection.
(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, ninety-two thousand five hundred dollars; Commissioner, Insurance Commission, ninety-two thousand five hundred dollars; Director, Lottery Commission, ninety-two thousand five hundred dollars; Director, Division of Homeland Security and Emergency Management, sixty-five thousand dollars; and Adjutant General, ninety-two thousand five hundred dollars.

(d) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.
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 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

1. Cadet During Training .............. 2,550.50 Mo. $30,606
2. Cadet Trooper After Training ...... 3,138.17 Mo. 37,658
3. Trooper Second Year .................. 39,122
4. Trooper Third Year .................... 39,494
5. Senior Trooper ......................... 39,882
6. Trooper First Class .................... 40,470
7. Corporal ................................. 41,058
8. Sergeant ............................... 45,234
9. First Sergeant .......................... 47,322
10 Second Lieutenant .................................................. 49,410
11 First Lieutenant .................................................. 51,498
12 Captain ............................................................... 53,586
13 Major ................................................................. 55,674
14 Lieutenant Colonel ................................................ 57,762

ANNUAL SALARY SCHEDULE (BASE PAY)
ADMINISTRATION SUPPORT
SPECIALIST CLASSIFICATION

1 I .......................................................... $39,494
2 II ......................................................... 39,882
3 III ....................................................... 40,470
4 IV ......................................................... 41,058
5 V ............................................................ 45,234
6 VI ........................................................... 47,322
7 VII ............................................................ 49,410
8 VIII ......................................................... 51,498

ANNUAL SALARY SCHEDULE (BASE PAY)
CRIMINALIST CLASSIFICATION

1 I .......................................................... $39,494
2 II ......................................................... 39,882
3 III ....................................................... 40,470
4 IV ......................................................... 41,058
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

1  Cadet During Training ..........  $ 2,752 Mo. $ 33,024
2  Cadet Trooper After Training .... 3,357.33 Mo. 40,288
3  Trooper Second Year ...............  41,296
4  Trooper Third Year .................  41,679
5  Senior Trooper .................  42,078
6  Trooper First Class ...............  42,684
7  Corporal ..................  43,290
8  Sergeant ..................  47,591
9  First Sergeant .................  49,742
10 Second Lieutenant ..................  51,892
11 First Lieutenant ..................  54,043
12 Captain ..................  56,194
13 Major ..................  58,344
14 Lieutenant Colonel ........................................ 60,495

**ANNUAL SALARY SCHEDULE (BASE PAY)**
**ADMINISTRATION SUPPORT**
**SPECIALIST CLASSIFICATION**

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**ANNUAL SALARY SCHEDULE (BASE PAY)**
**CRIMINALIST CLASSIFICATION**

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<th>Level</th>
<th>Salary</th>
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<td>I</td>
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<td>51,892</td>
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</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.

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.

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.
Be it enacted by the Legislature of West Virginia:

That §15-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-6. Authority to make rules for grievance procedure.

1 The superintendent shall have continuing authority to
2 propose legislative rules for promulgation in accordance with
3 the provisions of article three, chapter twenty-nine-a of this
4 code, relating to a grievance procedure for sworn members of
5 the State Police. At a minimum, the rule shall provide a
6 process for filing and resolving grievances at the lowest
7 possible level in a timely manner, providing for
8 representation, taking evidence at each level, establishing a
9 hearing procedure, providing for appellate review, allocating
10 costs and authorizing attorney fees to a grievant who prevails
11 on appeal.

CHAPTER 201

(Com. Sub. for H.B. 4471 - By Delegates Spencer, DeLong,
Caputo, Perry, Boggs, Stemple and Crosier)

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §15-2-24b; and to
§15-2A-6, §15-2A-6a, §15-2A-6c, §15-2A-6d, §15-2A-7,
§15-2A-17 and §15-2A-19 of said code, all relating to the West
Virginia State Police Retirement Fund; requiring the State Police to collect a fee for certain fingerprinting services and deposit the fees into the retirement system; adding, deleting and modifying definitions; specifying the title of West Virginia State Police Retirement System; clarifying the usage of the terms “employee”, “member” and “retirant or retiree” as defined; clarifying the usage of the terms “fund”, “plan”, “system” or “retirement system” as defined; clarifying the usage of the term “base salary” as defined; clarifying the usage of the term “agency” as defined; authorizing the board to increase or decrease the employee’s contribution rate under specified circumstances; reducing the normal retirement age for members; eliminating minimum required eligible direct rollover distributions paid directly to an eligible retirement plan; allowing distributions totaling less than two hundred dollars within the definition of “eligible rollover distribution”; clarifying the usage of the term “surviving spouse” as defined; clarifying surviving spouse payments when calculating the prorata share of annuity adjustments; specifying the time frame that a retirant may receive deferred annuity payments; clarifying the age requirement for a retirant receiving a duty disability annuity; requiring the base salary of a member receiving a duty disability annuity to be annualized until the member has worked twelve months; specifying the title of the West Virginia Insurance Commission; clarifying the time frame for which a duty disability retirant receives a retirement benefit; specifying that disability petitions certify the job description of an employee applying for a disability retirement; specifying the time frame for receipt of awards and benefits to dependents of deceased employees; clarifying that death awards and benefits be calculated for the last full twelve-month employment period; requiring that death awards and benefits be paid to a named beneficiary or to the estate of the deceased member if there is no surviving spouse or dependents; eliminating duplicate language referring to a single receipt of state retirement benefits; and adding provisions specifying the time frame for receipt of beneficiary payments.
Be it enacted by the Legislature of West Virginia:


Article 2. West Virginia State Police.
2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24b. Fees for certain fingerprinting services; dedication of fees.

In addition to any fees that may be established or collected by the State Police under any other provision of this article or rule promulgated pursuant thereto, the State Police shall collect a fee of twenty dollars for performing adult private employment fingerprinting or fingerprinting for federal firearm permits: Provided, That all state entities are exempt from the fee. Fees collected pursuant to this section shall be deposited into the West Virginia State Police Retirement System and shall be in addition to employer percent-of-payroll contribution.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.
§15-2A-4. Participation in system; continuation of fund.
§15-2A-5. Employee contributions; employer contributions; forfeitures.
§15-2A-6c. Direct rollovers.
§15-2A-6d.  Rollovers and transfer to purchase service credit or repay withdrawn contributions.


§15-2A-8.  Refunds to certain members upon discharge of resignation; deferred retirement.


§15-2A-10.  Same — Due to other causes.


§15-2A-11a.  Physical examinations of prospective members; application for disability benefit; determinations.


§15-2A-12.  Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.

§15-2A-13.  Same — When member dies from nonservice-connected causes before serving twenty years.

§15-2A-14.  Awards and benefits to dependents of member -- When member dies after retirement or after serving twenty years.

§15-2A-15.  Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

§15-2A-17.  Awards and benefits to dependents of member – Termination.

§15-2A-19.  Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.


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

3 (1) “Accumulated contributions” means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

6 (2) "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.

12 (3) “Agency” means the West Virginia State Police.

13 (4) "Base salary" means compensation paid to an employee without regard to any overtime pay.
(5) “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.

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

(7) “Dependent child” means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of eighteen;

(B) 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

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

(8) “Dependent parent” means the member’s or retirant’s parent or stepparent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member’s or retirant’s death.

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

(10) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee’s last ten years of service.
(11) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(13) "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 purely administrative in nature.

(14) "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.

(15) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(16) "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.

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

80 (18) "Plan year" means the twelve-month period
81 commencing on the first day of July of any designated year
82 and ending the following thirtieth day of June.

83 (19) "Required beginning date" means the first day of
84 April of the calendar year following the later of: (a) The
85 calendar year in which the member attains age seventy and
86 one-half years; or (b) the calendar year in which he or she
87 retires or otherwise separates from service with the agency
88 after having attained the age of seventy and one-half years.

89 (20) "Retirant" or "retiree" means any member who
90 commences an annuity payable by the retirement system.

91 (21) "Salary" means the compensation of an employee,
92 excluding any overtime payments.

93 (22) "Surviving spouse" means the person to whom the
94 member or retirant was legally married at the time of the
95 member’s or retirant’s death and who survived the member
96 or retirant.

97 (23) "Totally disabled" means an employee’s probable
98 permanent inability to engage in substantial gainful activity
99 by reason of any medically determined physical or mental
100 impairment that can be expected to result in death or that has
101 lasted or can be expected to last for a continuous period of
102 not less than twelve months. For purposes of this
103 subdivision, an employee is totally disabled only if his or her
104 physical or mental impairments are so severe that he or she
105 is not only unable to perform his or her previous work as an
106 employee of the agency, but also cannot, considering his or
107 her age, education and work experience, engage in any other
108 kind of substantial gainful employment which exists in the
109 state regardless of whether: (A) The work exists in the
(24) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by twelve. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under section eight of this article, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in section eight of this article, to reinstate the years of service.

§15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.

(a) The West Virginia State Police Retirement System is continued. Any West Virginia state trooper employed by the agency on or after the effective date of this article shall be a member of this retirement system and may not qualify for membership in any other retirement system administered by the board so long as he or she remains employed by the State Police.

(b) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this
system, 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.

(c) The board created pursuant to article ten-d, chapter
five of this code shall administer the retirement system. The
board may sue and be sued, contract and be contracted with
and conduct all the business of the system in the name of the
West Virginia State Police Retirement System.

(d) This fund is intended to meet the federal qualification
requirements of Section 401(a) and related sections of the
Internal Revenue Code as applicable to governmental plans.
Notwithstanding any other provision of state law, the board
shall administer the retirement system to fulfill this intent for
the exclusive benefit of the employees, members, retirants
and their beneficiaries. Any provision of this article
referring or relating to these federal qualification
requirements shall be effective as of the date required by
federal law. The board may promulgate rules and amend or
repeal conflicting rules in accordance with the authority
granted to the board pursuant to section one, article ten-d,
chapter five of this code to assure compliance with this
section.

§15-2A-4. Participation in system; continuation of fund.

The West Virginia State Police Retirement Fund is
continued for the benefit of the members and retirants of the
system created pursuant to this article and the dependents of
any deceased or retired member of the system. All moneys
paid into and accumulated in the fund, except any amounts
designated or set aside by the board for payments of benefits
as provided in this article, shall be invested by the West
Virginia Investment Management Board as provided by law.
§15-2A-5. Employee contributions; employer contributions; forfeitures.

(a) There shall be deducted from the monthly payroll of each employee and paid into the fund created pursuant to section four of this article twelve percent of the amount of his or her salary: Provided, That after the first day of July, two thousand eight, if the unfunded liability of the fund falls below the ninety percent threshold, then the employee rate of contribution shall be increased to thirteen percent of the amount of the employee’s salary until the ninety percent or better funding level is again achieved. Once that funding level is achieved the employee contribution rate will be reduced to twelve percent.

(b) The State of West Virginia's contributions to the retirement system, as determined by the board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the employees’ total annual base salary related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the state, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and retirants and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the board over a period of years determined actuarially appropriate. When proposing a rule for promulgation which relates to the amount of employer contribution, the board may promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code if the inability of the board to increase state contributions will detrimentally affect the actuarial soundness of the retirement system. A signed statement from the state actuary shall accompany the statement of facts and circumstances constituting an emergency which shall be filed in the State Register. For
purposes of this section, subdivision (2), subsection (b), section fifteen-a, article three, chapter twenty-nine-a of this code is not applicable to the Secretary of State's determination of whether an emergency rule should be approved. The state's contributions shall be paid monthly into the fund created pursuant to section four of this article out of the annual appropriation for the agency.

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


(a) A member may retire with full benefits upon attaining the age of fifty and completing twenty-five or more years of service or attaining the age of fifty-two and completing twenty years or more of service by filing with the board his or her voluntary application in writing for retirement. A member who is less than age fifty-two may retire upon completing twenty years or more of service: Provided, That he or she will receive a reduced benefit that is of equal actuarial value to the benefit the member would have received if the member deferred commencement of his or her accrued retirement benefit to the age of fifty-two.

(b) When the board retires a member with full benefits under the provisions of this section, the board, by order in writing, shall make a determination that the member is entitled to receive an annuity equal to two and three-fourths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service at the time of retirement. The retirant’s annuity shall begin the first day of the calendar month following the month in which the member's application for the annuity is filed with the board on or after his or her attaining age and service requirements and termination of employment.
(c) 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 a deferred or immediate commencement of benefit.


Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and Treasury regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system 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 retirement system, the board shall advise affected members or retirants of any additional limitation on the annuities required by this section.

§15-2A-6c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:
(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible
rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.

§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of an employee solely for the
purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds
required pursuant to this article for the reinstatement of
service credit previously forfeited on account of any refund
or withdrawal of contributions permitted in this article, as set
forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as
permitting rollovers or transfers into this system or any other
system administered by the board other than as specified in
this section and no rollover or transfer shall be accepted into
the system in an amount greater than the amount required for
the purchase of permissive service credit or repayment of
withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as
permitting the purchase of service credit or repayment of
withdrawn or refunded contributions except as otherwise
permitted in this article.


(a) Every retiree of the fund who is sixty-three years of
age or older and who is retired by the board under the
provisions of section six of this article; every retiree who is
retired under the provisions of section nine or ten of this
article; and every surviving spouse receiving a benefit
pursuant to section twelve, thirteen or fourteen of this article
is eligible to receive an annual retirement annuity adjustment
equal to one percent of his or her retirement award or
surviving spouse 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 retiree or surviving spouse from the fund in equal
monthly installments while the retiree or surviving spouse
are receiving annuity payments. The annuity adjustments
shall supplement the retirement awards and benefits provided
in this article.

(b) Any retiree or surviving spouse who receives a
benefit pursuant to the provisions of section nine, ten, twelve,
thirteen or fourteen 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
surviving spouse has been in receipt of surviving spouse
payments for less than one year when the first annuity
adjustment is given on that July first, that first annuity
adjustment will be a pro rata share of the full year's annuity
adjustment.

§15-2A-8. Refunds to certain members upon discharge of
resignation; deferred retirement.

(a) Any employee who is discharged by order of the
superintendent or otherwise terminates employment with the
agency is, at the written request of the member to the board,
entitled to receive from the fund a sum equal to the aggregate
of the principal amount of moneys deducted from his or her
base 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 by this
article 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.

(c) Every employee who completes ten years of service
with the agency is eligible, upon separation of employment,
to either withdraw his or her contributions in accordance with
subsection (a) of this section or to choose not to withdraw his
or her accumulated contributions. Upon attainment of age
sixty-two, a member who chooses not to withdraw his or her
contributions is eligible to receive a retirement annuity. The
annuity shall be payable during the lifetime of the retirant and
shall be in the amount of his or her accrued retirement benefit
as determined under section six of this article. The retirant
may choose, in lieu of a life annuity, an annuity in a reduced
amount payable during the retirant’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 the monthly benefit amount shall
be calculated to be of equal actuarial value to the life annuity
the retirant could otherwise have chosen. Any retirant
choosing to receive the deferred annuity under this subsection
is not eligible to receive the annual annuity adjustment
provided in section seven of this article. A retiring member
under the provisions of this section may receive retirement
annuity payments on the first day of the month following his
or her attaining age sixty-two and upon receipt of the
application for retirement. The board shall promptly provide
the member with an explanation of his or her optional forms
of retirement benefits and, upon receipt of properly executed
forms from the agency and member, the board shall process
the member’s request for and commence payments as soon
as administratively feasible.

§15-2A-9. Awards and benefits for disability -- Incurred in
performance of duty.

(a) Any employee of the agency 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, unable to perform adequately the duties
required of him or her as an employee of the agency, but is
able to engage in other gainful employment in a field other
than law enforcement, be retired from active service by the
board. The retirant thereafter is entitled to receive annually
from the fund in equal monthly installments during his or her
lifetime, or until the retirant attains the age of fifty-five or
until the disability eligibility sooner terminates, one or the
other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary
received in the preceding twelve-month employment period:
Provided, That if the member had not been employed with
the agency for twelve months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit; or

(2) The sum of six thousand dollars. The first day of the
month following the date in which the retirant attains age
fifty-five, the retirant shall receive the benefit provided in
section six of this article as it would apply to his or her final
average salary based on earnings from the agency through the
day immediately preceding his or her disability. The
recalculation of benefit upon a retirant attaining age fifty-five
shall be considered to be a retirement under the provisions of
section six of this article for purposes of determining the
amount of annual annuity adjustment and for all other
purposes of this article: Provided, That 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, however, That a retirant on
a 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 as 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.

(b) Any member who has not yet entered retirement
status on the basis of age and service and who becomes
physically or mentally disabled by injury, illness or disease
on a probable permanent basis 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 or is engaged in the
performance of his or her duties as an employee of the
agency to the extent that the employee is incapacitated ever
to engage in any gainful employment, the employee 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 sooner terminates, an amount equal to
the base salary received by the employee in the preceding full
twelve-month employment period. Until a member has
worked twelve months, the amount of monthly base salary shall be
annualized for the purpose of determining the benefit.

(c) The superintendent of the agency 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 retirant who is 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 employee was or shall be engaged in
the performance of duties as an employee of the agency.
Whenever the superintendent determines that any disabled
retirant is ineligible to receive any of the benefits in this
section at public expense, the superintendent shall, at the
request of the disabled 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. 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.

§15-2A-10. Same -- Due to other causes.

(a) If any employee while in active service of the agency becomes partially or totally disabled on a probable permanent basis 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. There shall be paid annually to the retirant from the fund in equal monthly installments, commencing on the date the retirant is retired and continuing during the lifetime of the retirant or until the retirant attains the age of fifty-five; while in status of retirement an amount equal to one half the base salary received by the retirant in the preceding full twelve-month period: Provided, That if the retirant had not been employed with the agency for twelve full months prior to the disability, the amount of monthly base salary shall be annualized for the purpose of determining the benefit.

(b) The first day of the month following the date in which the retirant attains age fifty-five, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age fifty-five shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.


The board may require any disabled retirant to submit to a physical or mental examination or both a physical and
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 expenses of the agency, and the physician or physicians shall submit a report of the findings of the physician or physicians 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 any gainful employment, but unable to adequately perform the duties of a law-enforcement officer, the board shall order, in the case of a disabled retirant receiving benefits under the provisions of section nine of this article, that the disabled retirant be paid annually from the fund an amount equal to six tenths of the base salary paid to the retirant in the last full twelve-month employment period. The board shall order, in the case of a disabled retirant receiving benefits under the provisions of section ten of this article, that the disabled retirant be paid from the fund an amount equal to one fourth of the base salary paid to the retirant in the last full twelve-month employment period: Provided, That if the retirant had not been employed with the agency for twelve full months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.
(a) Not later than thirty days after an employee becomes a member of the fund, the employer shall forward to the board a copy of the physician's report of a physical examination which incorporates the standards or procedures described in section seven, article two, chapter fifteen of this code. A copy of the physician's report shall be placed in the employee's retirement system file maintained by the board.

(b) Application for a disability benefit may be made by an employee or, if the employee is under an incapacity, by a person acting with legal authority on 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 agency 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 legislative rules proposed in accordance with article three, chapter twenty-nine-a of this code. 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 job description, 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.

(c) The board shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code relating to the processing of applications and petitions for disability retirement under this article.
(d) The board shall notify an employee 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 employee 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 aggrieved shall notify the board within twenty days of the employee’s or superintendent's receipt of the board’s notice that they intend to pursue judicial review of the board’s decision.

(e) The board may require a disabled retirant to file an annual statement of earnings and any other information required in rules which may be adopted by the board. The board may waive the requirement that a disabled retirant 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 the disabled retirant. If a disabled retirant refuses to file the statement or information, the disability benefit shall be suspended until the statement and information are filed.


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 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 agency 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 House of Delegates with primary responsibility for retirement legislation.
§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.

The surviving spouse, the dependent child or children or dependent parent or parents of any employee who has lost or shall lose his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of employees while the employee was engaged in the performance of his or her duties as an employee of the agency, or the survivor of a retirant who dies from any cause after having been retired pursuant to the provisions of section nine of this article, is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime, one or the other of two amounts, which shall become payable the first day of the month following the employee’s or retirant’s death and which shall be the greater of:

1. An amount equal to nine tenths of the base salary received in the preceding full twelve-month employment period by the deceased employee: *Provided*, That if the employee had not been employed with the agency for twelve full months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

2. The sum of ten thousand dollars.

In addition, the surviving spouse is entitled to receive and shall be paid one hundred fifty dollars monthly for each dependent child. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to one third of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there
shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: 
Provided, That when there is 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: Provided, however, That if there is no surviving spouse, dependent child, or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

Any person qualifying as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding seven thousand five hundred dollars, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions as long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive
beneficiary payments on the first day of the month following the date the deceased member 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 of the month 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 surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

It is the intent of the Legislature that the levels of benefits provided by operation of this section from the effective date of the enactment of this section during the regular session of the Legislature, two thousand five, be the same levels of benefits as provided by this section as amended and reenacted during the fourth extraordinary session of the Legislature, two thousand five. Accordingly, the effective date of the operation of this section as amended and reenacted during the fourth extraordinary session of the Legislature, two thousand five, is expressly made retrospective to the ninth day of April, two thousand five.

§15-2A-13. Same -- When member dies from nonservice-connected causes before serving twenty years.

(a) In any case where an employee while in active service 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 member during his or her lifetime, or until the surviving
spouse remarries, a sum equal to one half of the base salary received in the preceding full twelve-month employment period by the deceased member:  *Provided, That if the member had not been employed with the agency for twelve full months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.  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 one fourth of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount that a surviving spouse would have been entitled to receive:  *Provided, however, That when there is one dependent parent surviving, then 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:  *Provided further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries:  *And provided further, That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(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 of the month following the date the deceased member 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 of the month 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 surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

§15-2A-14. Awards and benefits to dependents of member -- When member dies after retirement or after serving twenty years.

(a) When any employee of the agency has completed twenty years of service or longer as an employee of the agency and 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 member or retirant, during the lifetime or until remarriage of the surviving spouse, an amount equal to two thirds of the retirement benefit which the deceased retirant was receiving while in status of retirement or would have been entitled to receive to the same effect as if the member had been retired under the provisions of this article immediately prior to the time of his or her death. In no event shall the annual benefit payable be less than five thousand dollars. In addition, the surviving spouse is entitled to receive and there shall be paid to the surviving spouse from the fund the sum of one hundred dollars monthly for each dependent child. 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 member a sum equal to one fourth 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 member 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 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: Provided, however, That if there is no
surviving spouse, dependent child or dependent parent of the
deceased member, the accumulated contributions shall be
paid to a named beneficiary or beneficiaries: Provided
further, That if there is no surviving spouse, dependent child,
dependent parent of the deceased member or any named
beneficiary or beneficiaries, then the accumulated
contributions shall be paid to the estate of the deceased
member.

(b) The retirant may choose a higher percentage of
surviving spouse benefits by taking an actuarially determined
reduced initial benefit so that the chosen spouse benefit and
initial benefit would be actuarially equivalent to the normal
spouse benefit and initial benefit. The board shall design
these benefit options and provide them as choices for the
retirant to select. For the purposes of this subsection, "initial
benefit" means the benefit received by the retirant upon
retirement.

§15-2A-15. Exemption from taxation, garnishment and other
process; exception for certain qualified domestic
relations orders.

The moneys in the fund and the right of a member or
retirant to a retirement allowance, to the return of
contributions or to any benefit under the provisions of this
article are hereby exempt from any state or municipal tax; are
not subject to execution, garnishment, attachment or any
other process whatsoever except that the benefits or
contributions under this system are subject to "qualified
domestic relations orders" as that term is defined in Section
414(p) of the Internal Revenue Code with respect to
§15-2A-17. Awards and benefits to dependents of member -- Termination.

When any surviving spouse of a member or retirant dies or remarries while receiving or being entitled to receive any benefits under any section except section twelve of this article, the surviving spouse may not from the date of his or her remarriage, nor may the estate from the date of death of the deceased member's or retirant’s surviving spouse, be entitled to receive any benefits under this article whatsoever: Provided, That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of the surviving spouse, payment of benefits to that child or children shall be calculated for payment from the date the surviving spouse dies or remarries.

§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) Any member who has previously served on active military duty is entitled to receive additional credited service for the purpose of determining the amount of retirement award 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 receiving no benefits from any other retirement system for his or her active military duty; and

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

(b) 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 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 agency, or its predecessor agency, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall 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 presented himself or herself to the superintendent and offered to resume service as an active member 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.

(c) The total amount of military service credit allowable under this section may not exceed five years for any member of the agency.

(d) Notwithstanding 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 shall 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.

CHAPTER 202

(Com. Sub. for S.B. 323 - By Senators Bowman and Oliverio)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 17, 2008.]

AN ACT to amend and reenact §8-20-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13-16 and §16-13-23a of said code; and to amend and reenact §16-13A-9 of said code, all relating to the establishment and operation of stormwater systems; authorizing municipalities to
set rates, charges and fees for stormwater services; providing that water service may be terminated for nonpayment of stormwater service fees; authorizing municipalities to adopt ordinances or regulations to allow issuance of orders, entry on property, setting fines and penalties for violation of stormwater law; establishing requirements for notice of violations; authorizing municipality to correct violations and collect cost from violator; and providing that the owner, occupant or tenant of real property is deemed to be served by a stormwater system under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §8-20-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-13-16 and §16-13-23a of said code be amended and reenacted; and that §16-13A-9 of said code be amended and reenacted, all to read as follows:


CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
(a)(1) The governing body of a municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all necessary rules for the repair, maintenance, operation and management of the combined system of the municipality and for the use thereof. The governing body of a municipality also has the plenary power and authority to make, enact and enforce all necessary rules and ordinances for the care and protection of any such system for the health, comfort and convenience of the public, to provide a clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if applicable, to properly collecting and controlling the stormwater as is reasonably possible to do: Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or storm water facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) A municipality has the plenary power and authority to charge the users for the use and service of a combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the storm water services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance. The rates, fees or charges shall be changed, from time to time, as necessary, consistent with the provisions of this article.
(3) All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of one hundred dollars or two twelfths of the average annual usage of the applicant’s specific customer class, whichever is greater, to secure the payment of water and sewage service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user’s service is disconnected or terminated, service may not be reconnected or reinstated by the municipality or governing body until another deposit equal to one hundred dollars or a sum equal to two twelfths of the average usage for the applicant’s specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer’s account with interest at a rate to be set by the Public Service Commission: Provided, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may terminate water services to a delinquent user of either water or sewage facilities, or both, ten days after the water or sewage services become delinquent.
regardless of whether the governing body utilizes the security
deposit to satisfy any delinquent payments: *Provided, That*
any termination of water service must comply with all rules
and orders of the Public Service Commission.

(b) Whenever any rates, fees or charges for services or
facilities furnished remain unpaid for a period of twenty days
after they become due, the user of the services and facilities
provided shall be delinquent and the municipality or
governing body may apply any deposit against any
delinquent fee. The user is liable until such time as all rates,
fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer
service and, if applicable, stormwater service, whenever
delinquent, as provided by ordinance of the municipality,
shall be liens of equal dignity, rank and priority with the lien
on such premises of state, county, school and municipal taxes
for the amount thereof upon the real property served. The
municipality has the plenary power and authority to enforce
such lien in a civil action to recover the money due for
services rendered plus court fees and costs and reasonable
attorney’s fees: *Provided, That an owner of real property
may not be held liable for the delinquent rates, fees or
charges for services or facilities of a tenant, nor shall any lien
attach to real property for the reason of delinquent rates, fees
or charges for services or facilities of a tenant of the real
property, unless the owner has contracted directly with the
municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing
fees or other fees and costs incidental to filing an action in
magistrate court for collection of the delinquent rates and
charges. If the municipality collects the delinquent account,
plus fees and costs, from its customer or other responsible
party, the municipality shall pay to the magistrate court the
filing fees or other fees and costs which were previously
defered.
(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through a civil action in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality has exhausted all other remedies for collection of debts with respect to such delinquencies prior to bringing the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency has been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

(f) Notwithstanding any other provision contained in this article, a municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or acts are not contrary to any rules or orders of the Public Service Commission.

(g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail, return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct violation of the municipal stormwater ordinance or regulation, the municipality may correct or have the corrections of the
violation made and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(h) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant’s deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

§16-13-23a. Additional powers of municipality to cease pollution.

A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:
(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(e) The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant’s specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average
usage for the applicant’s specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer’s account with interest at a rate as the Public Service Commission may prescribe: Provided, That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent. The user is liable until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in the notice for the hearing.

(i) After the hearing, which may be adjourned, from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of the rates, fees and charges shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as the rates, fees or charges were originally established as hereinbefore provided: Provided, That if a change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for the expense of operation, repair and maintenance and for the sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge is not paid within twenty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney’s fee, may be recovered by the board in a civil action in the name of the municipality. The lien may be foreclosed against such lot, parcel of land or building in accordance with the laws relating thereto. Where both water and sewer services are furnished by any
107 municipality to any premises, the schedule of charges may be
108 billed as a single amount or individually itemized and billed
109 for the aggregate thereof.

110  (l) Whenever any rates, rentals, fees or charges for
111 services or facilities furnished shall remain unpaid for a
112 period of twenty days after they become due, the property
113 and the owner thereof, as well as the user of the services and
114 facilities shall be delinquent until such time as all rates, fees
115 and charges are fully paid. When any payment for rates,
116 rentals, fees or charges becomes delinquent, the governing
117 body may use the security deposit to satisfy the delinquent
118 payment.

119  (m) The board collecting the rates, fees or charges shall
120 be obligated under reasonable rules to shut off and
121 discontinue both water and sewer services to all delinquent
122 users of water, sewer or stormwater facilities and shall not
123 restore either water facilities or sewer facilities to any
124 delinquent user of any such facilities until all delinquent
125 rates, fees or charges for water, sewer and stormwater
126 facilities, including reasonable interest and penalty charges,
127 have been paid in full, as long as such actions are not
128 contrary to any rules or orders of the Public Service
129 Commission.

§16-13-23a. Additional powers of municipality to cease
pollution.

1  (a) Notwithstanding any other provision contained in this
2 article, and in addition thereto, the governing body of any
3 municipality which has received or which hereafter receives
4 an order issued by the Secretary of the Department of
5 Environmental Protection or the Environmental Quality
6 Board requiring the municipality to cease the pollution of any
7 stream or waters is hereby authorized to establish and
8 maintain, by ordinance, just and equitable rates, fees or
charges for the use of the services and facilities of the existing municipal sewer system and/or stormwater system, or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

(b) The rates, fees or charges shall be sufficient to all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection, treatment, purification and disposal of sewage or stormwater and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board, and for the operation, maintenance and repair of the entire works and system.

(c) The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the Municipal Bond Commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

(d) After the completion of the construction, the rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension, from time to time, of the entire sewer and works or entire stormwater works.
(e) No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

(f) After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing setting forth the proposed schedule of rates, fees or charges shall be given by publication of notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

(g) After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works and in the office of the clerk of the municipality. The schedule of rates, fees and charges shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(h) Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.
75 (i) If any rate, fee or charge is not paid within thirty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney’s fee, may be recovered by the sanitary board of the municipality in a civil action in the name of the municipality.

80 (j) Any municipality exercising the powers given herein has the authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery or works necessary to comply with the order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: Provided, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board and the rights, powers and duties of the municipality and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article.

101 (k) The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements and stormwater facilities constructed, owned or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.
(l) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or actions are not contrary to any rules or orders of the Public Service Commission.

(m) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail, return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct the violation of the municipal stormwater ordinance or regulation, the municipality may make or have made the corrections of the violation and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(n) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.
ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a) (1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and
reasonnable, taking into consideration the location of the
premises served and the nature and extent of the services and
facilities furnished. However, no rates, fees or charges for
stormwater services may be assessed against highways, road
and drainage easements or stormwater facilities constructed,
owned or operated by the West Virginia Division of
Highways.

(2) Where water, sewer, stormwater or gas services, or
any combination thereof, are all furnished to any premises,
the schedule of charges may be billed as a single amount for
the aggregate of the charges. The board shall require all
users of services and facilities furnished by the district to
designate on every application for service whether the
applicant is a tenant or an owner of the premises to be served.
If the applicant is a tenant, he or she shall state the name and
address of the owner or owners of the premises to be served
by the district. Notwithstanding the provisions of section
eight, article three, chapter twenty-four of this code to the
contrary, all new applicants for service shall deposit the
greater of a sum equal to two twelfths of the average annual
usage of the applicant’s specific customer class or fifty
dollars, with the district to secure the payment of service
rates, fees and charges in the event they become delinquent
as provided in this section. If a district provides both water
and sewer service, all new applicants for service shall deposit
the greater of a sum equal to two twelfths of the average
annual usage for water service or fifty dollars and the greater
of a sum equal to two twelfths of the average annual usage
for wastewater service of the applicant’s specific customer
class or fifty dollars. In any case where a deposit is forfeited
to pay service rates, fees and charges which were delinquent
at the time of disconnection or termination of service, no
reconnection or reinstatement of service may be made by the
district until another deposit equal to the greater of a sum
equal to two twelfths of the average usage for the applicant’s
specific customer class or fifty dollars has been remitted to
the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer’s account at a rate as the Public Service Commission may prescribe: Provided, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service
district or a municipality included within the boundaries of
the sewer or stormwater district is providing water service
and the district providing sewer or stormwater service
experiences a delinquency in payment, the district or the
municipality included within the boundaries of the sewer or
stormwater district that is providing water service, upon the
request of the district providing sewer or stormwater service
to the delinquent account, shall terminate its water service to
the customer having the delinquent sewer or stormwater account: Provided, however, That any termination of water
service must comply with all rules and orders of the Public
Service Commission.

(c) Any district furnishing sewer facilities within the
district may require, or may by petition to the circuit court of
the county in which the property is located, compel or may
require the Division of Health to compel all owners, tenants
or occupants of any houses, dwellings and buildings located
near any sewer facilities where sewage will flow by gravity
or be transported by other methods approved by the Division
of Health, including, but not limited to, vacuum and pressure
systems, approved under the provisions of section nine,
article one, chapter sixteen of this code, from the houses,
dwellings or buildings into the sewer facilities, to connect
with and use the sewer facilities and to cease the use of all
other means for the collection, treatment and disposal of
sewage and waste matters from the houses, dwellings and
buildings where there is gravity flow or transportation by any
other methods approved by the Division of Health, including,
but not limited to, vacuum and pressure systems, approved
under the provisions of section nine, article one, chapter
sixteen of this code and the houses, dwellings and buildings
can be adequately served by the sewer facilities of the district
and it is declared that the mandatory use of the sewer
facilities provided for in this paragraph is necessary and
essential for the health and welfare of the inhabitants and
residents of the districts and of the state. If the public service
district requires the property owner to connect with the sewer
district requires the property owner to connect with the sewer
facilities even when sewage from dwellings may not flow to
the main line by gravity and the property owner incurs costs
for any changes in the existing dwellings' exterior plumbing
in order to connect to the main sewer line, the Public Service
District Board shall authorize the district to pay all
reasonable costs for the changes in the exterior plumbing,
including, but not limited to, installation, operation,
maintenance and purchase of a pump or any other method
approved by the Division of Health. Maintenance and
operation costs for the extra installation should be reflected
in the users charge for approval of the Public Service
Commission. The circuit court shall adjudicate the merits of
the petition by summary hearing to be held not later than
thirty days after service of petition to the appropriate owners,
tenants or occupants.

(d) Whenever any district has made available sewer
facilities to any owner, tenant or occupant of any house,
dwelling or building located near the sewer facility and the
engineer for the district has certified that the sewer facilities
are available to and are adequate to serve the owner, tenant
or occupant and sewage will flow by gravity or be
transported by other methods approved by the Division of
Health from the house, dwelling or building into the sewer
facilities, the district may charge, and the owner, tenant or
occupant shall pay, the rates and charges for services
established under this article only after thirty-day notice of
the availability of the facilities has been received by the
owner, tenant or occupant. Rates and charges for sewage
services shall be based upon actual water consumption or the
average monthly water consumption based upon the owner’s,
tenant’s or occupant’s specific customer class.

(e) The owner, tenant or occupant of any real property
may be determined and declared to be served by a stormwater
system only after each of the following conditions is met: (1)
The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district’s authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System’s designated service area. It is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts:
Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by section eleven of said article, is exempt from the provisions of this section.

(h) A public service district which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

CHAPTER 203

(S.B. 466 - By Senators Unger, Plymale, Prezioso, Foster, Jenkins, Stollings and Hunter)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §22C-1-3, §22C-1-6 and §22C-1-16 of the Code of West Virginia, 1931, as amended, all relating to the Water Development Authority; defining terms; providing
that stormwater systems may qualify as water development projects; and authorizing the Water Development Authority to administer the Dam Safety Rehabilitation Revolving Fund Loan Program.

Be it enacted by the Legislature of West Virginia:

That §22C-1-3, §22C-1-6 and §22C-1-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-3. Definitions.

§22C-1-6. Powers, duties and responsibilities of authority generally.

§22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.

§22C-1-3. Definitions.

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

1. “Authority” means the Water Development Authority provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

2. “Beneficial use” means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.
(3) “Board” means the Water Development Authority Board provided for in section four of this article, which shall manage and control the Water Development Authority.

(4) “Bond” or “water development revenue bond” means a revenue bond, note or other evidence of indebtedness issued by the Water Development Authority to effect the intents and purposes of this article.

(5) “Construction” includes reconstruction, enlargement, improvement and providing furnishings or equipment.

(6) “Cost” means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to public water facilities, stormwater systems or wastewater facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the
financing of such acquisition or construction, including the
amount authorized in the resolution of the authority providing
for the issuance of water development revenue bonds to be
paid into any special funds from the proceeds of such bonds;
and the financing of the placing of any such project in
operation. Any obligation or expenses incurred by any
governmental agency, with the approval of the authority, for
surveys, borings, preparation of plans and specifications and
other engineering services in connection with the acquisition
or construction of a project are a part of the cost of such
project and shall be reimbursed out of the proceeds of loans
or water development revenue bonds as authorized by the
provisions of this article.

(7) “Establishment” means an industrial establishment,
mill, factory, tannery, paper or pulp mill, mine, colliery,
breaker or mineral processing operation, quarry, refinery,
well and each and every industry or plant or works or activity
in the operation or process of which industrial wastes or other
wastes are produced.

(8) “Governmental agency” means the state government
or any agency, department, division or unit thereof; counties;
municipalities; watershed improvement districts; soil
conservation districts; sanitary districts; public service
districts; drainage districts; regional governmental authorities
and any other governmental agency, entity, political
subdivision, public corporation or agency having the
authority to acquire, construct or operate public water
facilities, stormwater systems or wastewater facilities; the
United States government or any agency, department,
division or unit thereof; and any agency, commission or
authority established pursuant to an interstate compact or
agreement.

(9) “Industrial wastes” means any liquid, gaseous, solid
or other waste substance or any combination thereof,
resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, are also industrial wastes.

(10) “Other wastes” means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) “Owner” includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) “Person” means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the State of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) “Pollution” means: (a) The discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will or is likely to: (1) contaminate or substantially contribute to the
contamination of any of such waters; or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters: (i) Directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare; or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life; or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) “Project” or “water development project” means any public water facility, stormwater system or wastewater facility, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the
project, but excluding all buildings and facilities used to
produce electricity other than electricity for consumption by
the authority in the operation and maintenance of the project.

(15) “Public roads” mean all public highways, roads and
streets in this state, whether maintained by the state, county,
municipality or other political subdivision.

(16) “Public utility facilities” means public utility plants
or installations and includes tracks, pipes, mains, conduits,
cables, wires, towers, poles and other equipment and
appliances of any public utility.

(17) “Revenue” means any money or thing of value
collected by, or paid to, the Water Development Authority as
rent, use or service fee or charge for use of, or in connection
with, any water development project, or as principal of or
interest, charges or other fees on loans, or any other
collections on loans made by the Water Development
Authority to governmental agencies to finance, in whole or
in part, the acquisition or construction of any water
development project or projects or other money or property
which is received and may be expended for or pledged as
revenues pursuant to this article.

(18) “Sewage” means water-carried human or animal
wastes from residences, buildings, industrial establishments
or other places, together with such groundwater infiltration
and surface waters as may be present.

(19) “Stormwater system” means a stormwater system in
its entirety or any integral part thereof used to collect, control
or dispose of stormwater and an associated stormwater
management program. It includes all facilities, structures and
natural water courses used for collecting and conducting
stormwater to, through and from drainage areas to the points
of final outlet, including, but not limited to, any and all of the
following: Inlets, conduits, corals, outlets, channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term “stormwater system” does not include highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(20) “Stormwater management program” means those activities associated with the management, operation and maintenance and control of stormwater and stormwater systems and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term “stormwater management program” does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of the Division of Highways.

(21) “Water resources”, “water” or “waters” means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(22) “Wastewater” means any water containing sewage, industrial wastes or other wastes or contaminants derived
from the prior use of such water and includes, without
limiting the generality of the foregoing, surface water of the
type storm sewers are designed to collect and dispose of.

(23) “Wastewater facilities” means facilities for the
purpose of treating, neutralizing, disposing of, stabilizing,
cooling, segregating or holding wastewater, including,
without limiting the generality of the foregoing, facilities for
the treatment and disposal of sewage, industrial wastes or
other wastes, waste water and the residue thereof; facilities
for the temporary or permanent impoundment of wastewater,
both surface and underground; and sanitary sewers or other
collection systems, whether on the surface or underground,
designed to transport wastewater together with the equipment
and furnishings thereof and their appurtenances and systems,
whether on the surface or underground, including force mains
and pumping facilities therefor.

(24) “Water facility” means all facilities, land and
equipment used for the collection of water, both surface and
underground, transportation of water, treatment of water and
distribution of water all for the purpose of providing potable,
sanitary water suitable for human consumption and use.

§22C-1-6. Powers, duties and responsibilities of authority
generally.

The Water Development Authority has and may exercise
all powers necessary or appropriate to carry out and
effectuate its corporate purpose. The authority has the power
and capacity to:

(1) Adopt and, from time to time, amend and repeal
bylaws necessary and proper for the regulation of its affairs
and the conduct of its business and rules to implement and
make effective its powers and duties, such rules to be
promulgated in accordance with the provisions of chapter
twenty-nine-a of this code.
(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name and particularly to enforce the obligations and covenants made under sections nine, ten and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, water development projects and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules for the use of such projects.

(7) Make available the use or services of any water development project to one or more persons, one or more governmental agencies or any combination thereof.

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the state, payable solely from revenues as provided in section nine of this article unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the cost of, or financing by loans to governmental agencies, one or more water development projects or parts thereof.
(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any public water facilities, stormwater systems or wastewater facilities, operated under permits issued pursuant to the provisions of article eleven, chapter twenty-two of this code and owned by any person or governmental agency, and compensation shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in
the acquisition or construction of a water development
project pursuant to section sixteen of this article is not subject
to the foregoing requirements and the authority may enter
into such contract or lease or such agreement pursuant to
negotiation and upon such terms and conditions and for such
period as it finds to be reasonable and proper under the
circumstances and in the best interests of proper operation or
of efficient acquisition or construction of such project. The
authority may reject any and all bids. A bond with good and
sufficient surety, approved by the authority, is required of all
contractors in an amount equal to at least fifty percent of the
contract price, conditioned upon the faithful performance of
the contract.

(12) Employ managers, superintendents and other
employees, who are covered by the state civil service system,
and retain or contract with consulting engineers, financial
consultants, accounting experts, architects, attorneys and
such other consultants and independent contractors as are
necessary in its judgment to carry out the provisions of this
article and fix the compensation or fees thereof. All expenses
thereof are payable solely from the proceeds of water
development revenue bonds or notes issued by the authority,
from revenues and from funds appropriated for such purpose
by the Legislature.

(13) Receive and accept from any federal agency, subject
to the approval of the Governor, grants for or in aid of the
construction of any water development project or for research
and development with respect to public water facilities,
stormwater systems or wastewater facilities and receive and
accept aid or contributions from any source of money,
property, labor or other things of value to be held, used and
applied only for the purposes for which such grants and
contributions are made.
(14) Engage in research and development with respect to public water facilities, stormwater systems or wastewater facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Administer on behalf of the Department of Environmental Protection the Dam Safety Rehabilitation Revolving Fund Loan Program pursuant to the provisions of article fourteen of chapter twenty-two of this code. Revenues or moneys designated by this code or otherwise appropriated for use by the authority pursuant to the provisions of this article may not be used for the Dam Safety Rehabilitation Revolving Fund Loan Program and moneys in the Dam Safety Rehabilitation Revolving Fund shall be kept separate from all revenues and moneys of the authority.
(19) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

§22C-1-16. **Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.**

This section applies to any water development project or projects which are owned, in whole or in part, by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals or other charges for such use or services. Such rentals or other charges are not subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state and such contract may provide for acquisition by such person or governmental agency of all or any part of such water development project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain public water facilities, stormwater systems or wastewater facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.
Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof and by the payment of such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a public water facility, stormwater system or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority:
Provided, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

CHAPTER 204

(Com. Sub. for S.B. 501 - By Senators Fanning, Kessler, Foster, Bailey, Wells and McKenzie)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]


Be it enacted by the Legislature of West Virginia:

That §20-13-3, §20-13-4, §20-13-5 and §20-13-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. WEST VIRGINIA STREAM PARTNERS PROGRAM.

§20-13-3. West Virginia Stream Partners Program created; executive committee identified; program coordination.
§20-13-5. Grant qualifications.
§20-13-6. Administering agency support.
§20-13-3. West Virginia Stream Partners Program created; executive committee identified; program coordination.

Subject to annual appropriation of the Legislature, the program shall be jointly administered by the Division of Natural Resources, the Department of Environmental Protection, the Division of Forestry and the West Virginia State Soil Conservation Agency. The director, secretary or commissioner of each of these administering agencies, or his or her designee, collectively constitute an executive committee to oversee the program. The Governor shall designate a member of the executive committee to serve as chair. The committee may designate a staff member from the existing staff of one of the administering agencies to coordinate the program on behalf of the executive committee.


The West Virginia Stream Partners Program shall provide grants to groups comprised of representatives located in the immediate area of the stream or streams being addressed that are dedicated to achieving the purpose stated in section two of this article. The grants shall be awarded by consensus of the executive committee in accordance with legislative rules promulgated by the Department of Environmental Protection pursuant to article three, chapter twenty-nine-a of this code. Each grant shall be matched by the group of representatives with cash or in-kind services in, at least, an amount equal to twenty percent of the grant; Provided, That no grant shall exceed the amount of five thousand dollars.

§20-13-5. Grant qualifications.

In order to qualify for grants from the West Virginia Stream Partners Program, a group of representatives located
in the immediate area of a stream or streams which qualify under section two of this article shall apply to the executive committee in accordance with the following requirements and in accordance with any other provision of this article or any applicable rule. The application shall:

(a) Identify the stream or streams to be restored, protected, utilized or enhanced;

(b) Identify the representatives of groups applying for funds and the financially responsible entity to receive funds, all from the geographic area immediately surrounding the stream or streams. These identified individuals shall represent the general public, industry, environmental groups, sportsmen, forestry, agriculture, local government, tourism, recreation and affected landowners, all located in the geographic area immediately surrounding the stream or streams;

(c) Demonstrate an ability to achieve, within the grant year, a specific improvement project that enhances the identified stream or streams; and

(d) Evidence a commitment to educate the citizens in the area of the identified stream or streams about the benefits of restoring, protecting and enhancing the stream or streams in a responsible manner.

§20-13-6. Administering agency support.

The administering agencies may provide staff and other resources as necessary to address the technical assistance and administrative needs of the West Virginia Stream Partners Program. This support may include the utilization of resources and formulation of policies to achieve the purpose set forth in section two of this article.
CHAPTER 205

(Com. Sub. for S.B. 565 - By Senators Sypolt, Bailey and Love)

AN ACT to amend and reenact §11-3-2a of the Code of West Virginia, 1931, as amended, relating to notices of increased assessment; and requiring notice of an increase in the assessed valuation of real property only if the increase is one thousand dollars or more.

Be it enacted by the Legislature of West Virginia:

That §11-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2a. Notice of increased assessment required; exceptions to notice.

(a) If the assessor determines the assessed valuation of any item of real property is more than ten percent greater than the valuation assessed for that item in the last tax year, the increase is one thousand dollars or more and the increase is entered in the property books as provided in section nineteen of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice shall be given at least fifteen days prior to the first meeting in February at which the county commission meets as the board of equalization and review for that tax year and advise the
person assessed or the person controlling the property of his or her right to appear and seek an adjustment in the assessment. The notice shall be made by first class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in any one or more districts in which case the notice shall be by publication of the notice by a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area for the publication is the county. The requirement of notice under this section is satisfied and waived if personal notice of the increase is shown by:

(1) The taxpayer having signed the assessment form after it had been completed showing the increase;

(2) Notice was given as provided in section three-a of this article; or

(3) The person so assessed executing acknowledgment of the notice of the increase.

(b) During the initial reappraisal of all property under section seven, article one-c of this chapter, the tax commissioner and each county assessor shall send every person owning or controlling property appraised by the tax commissioner or the county assessor, as the case may be, a pamphlet which explains the reappraisal process and its equalization goal in a detailed yet informal manner. The property valuation training and procedures commission, created under section three, article one-c of this chapter, shall design the pamphlet for use in all counties while allowing individual county information to be included if it determines that the information would improve understanding of the process.
AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to providing an exemption from property taxation for property used by nonprofit corporations for providing electricity to residents of this state.

Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 (a) All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:

4 (1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

7 (2) Property belonging exclusively to the state;

8 (3) Property belonging exclusively to any county, district, city, village or town in this state and used for public purposes;
(4) Property located in this state belonging to any city, town, village, county or any other political subdivision of another state and used for public purposes;

(5) Property used exclusively for divine worship;

(6) Parsonages and the household goods and furniture pertaining thereto;

(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship or for the purpose of paying indebtedness thereon;

(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;

(11) Public and family libraries;

(12) Property used for charitable purposes and not held or leased out for profit;
(13) Property used for the public purposes of distributing electricity, water or natural gas or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;

(14) Property used for area economic development purposes by nonprofit corporations when the property is not leased out for profit;

(15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations not conducted for private profit;

(17) Property belonging to any public institution for the education of the deaf, dumb or blind or any hospital not held or leased out for profit;

(18) Houses of refuge and mental health facility or orphanage;

(19) Homes for children or for the aged, friendless or infirm not conducted for private profit;

(20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;
(21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;

(22) Household goods to the value of two hundred dollars, whether or not held or used for profit;

(23) Bank deposits and money;

(24) Household goods, which for purposes of this section means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property, when not held or used for profit;

(25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person when not held or used for profit;

(26) Dead victuals laid away for family use;

(27) All property belonging to the state, any county, district, city, village, town or other political subdivision or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property;

(28) Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution: Provided, That this exemption only applies in the case of such personal
property used on a farm or farming operation that annually
produces for sale agricultural products, as defined in rules of
the Tax Commissioner; and

(29) Any other property or security exempted by any
other provision of law.

(b) Notwithstanding the provisions of subsection (a) of
this section, no property is exempt from taxation which has
been purchased or procured for the purpose of evading
taxation whether temporarily holding the same over the first
day of the assessment year or otherwise.

(c) Real property which is exempt from taxation by
subsection (a) of this section shall be entered upon the
assessor's books, together with the true and actual value
thereof, but no taxes may be levied upon the property or
extended upon the assessor's books.

(d) Notwithstanding any other provisions of this section,
this section does not exempt from taxation any property
owned by, or held in trust for, educational, literary, scientific,
religious or other charitable corporations or organizations,
including any public or private nonprofit foundation or
corporation existing for the support of any college or
university located in West Virginia, unless such property, or
the dividends, interest, rents or royalties derived therefrom,
is used primarily and immediately for the purposes of the
corporations or organizations.

(e) The Tax Commissioner shall, by issuance of rules,
provide each assessor with guidelines to ensure uniform
assessment practices statewide to effect the intent of this
section.

(f) Inasmuch as there is litigation pending regarding
application of this section to property held by fraternities and
129  sororities, amendments to this section enacted in the year one
130  thousand nine hundred ninety-eight shall apply to all cases
131  and controversies pending on the date of such enactment.

132  (g) The amendment to subdivision (27), subsection (a) of
133  this section, passed during the two thousand five regular
134  session of the Legislature, shall apply to all applicable lease
135  purchase agreements in existence upon the effective date of
136  the amendment.

CHAPTER 207

(Com. Sub. for H.B. 4088 - By Delegates Ireland, Anderson,
Romine, Hartman, Stemple, C. Miller, Blair, Evans and Williams)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §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, all relating to a change in the calculation of farm
equipment dealers inventory to an average monthly basis rather
than the inventory as of the first day of July.

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, all to read as follows:

ARTICLE 6C. SPECIAL METHOD FOR APPRAISING
DEALER VEHICLE INVENTORY.
§11-6C-1. Inventory included within scope of article.

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, 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, and farm equipment dealers’
inventory, 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.

For the purposes of this article, “farm equipment” means
equipment exclusively used in planting, cultivating,
irrigation, and harvesting of agricultural products, but not
marketing of such products. The term "farm equipment"
includes, but is not limited to, the following equipment, and
also includes attachments and repair parts for the following
equipment: tractors; crawler tractors (other than bulldozers); walking tractors; cultivators; plows; harrows; power tillers; rotary tillers; spading machines; subsoilers; plastic mulch layers; planters and planting machines; seeders; mechanical transplanters; manure spreaders; fertilizer spreaders; insecticide and fertilizer sprayers; irrigation equipment; harvesters; fixed and portable belt and screw type conveyors exclusively used in agriculture; cotton pickers; hullers; swathers; windrows; balers; bale movers exclusively used in agriculture; hay conditioners; hay mowers; mowing machines; mower/conditioners; hay rakes; hay tedders; feed grinders; grain carts; rock pickers; milking machines and milking machine components, animal trailers, to the extent that they constitute tangible personal property, apiary equipment. Provided, that the term “farm equipment” does not include: (1) Property that is not tangible personal property, (2) building materials and equipment that is installed into a building or structure so as to be converted upon installation into a fixture or into real property, (3) cars, trucks, motorcycles and any other self-propelled machines designed primarily for the transportation of persons or property on a street or highway, (4) trailers, or towed machines or apparatus designed primarily for the transportation of persons or property on a street or highway, (5) fork lifts, backhoes, earth movers, bulldozers, end loaders, power shovels, excavators or other equipment primarily designed to be used in earth moving, excavation or construction activity, or in the activity of warehouse materials handling and (6) airplanes, and other aircraft, and (7) all terrain vehicles, motorcycles and other off road vehicles primarily designed for recreational use; and ‘farm equipment dealers’ means a person, partnership, corporation, association or other form of business enterprise which primarily sells farm equipment as defined above.

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", "farm equipment dealers inventory" and "house trailer and factory-built homes inventory".

§11-6C-2. Method for determining market value of dealer vehicle inventory, dealer motorboat inventory, farm equipment dealers 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, dealer motorboat inventory and farm equipment dealers 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, farm equipment dealers 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, farm equipment dealers 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, farm equipment dealers 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, farm equipment dealers 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
11 vehicle inventory, daily passenger rental car inventory, dealer
12 motorboat inventory, farm equipment dealers inventory or
13 house trailer and factory-built homes inventory; minimize
14 audit problems associated with such property; provide a
15 predictable revenue stream for levying bodies; maximize the
16 owner's ability to manage inventory; and provide clear
17 guidance to local authorities by superseding the wide variety
18 of otherwise lawful appraisal methods now in use in this
19 state.

20 (b) The Tax Commissioner shall have the power to
21 promulgate such rules as may be necessary to implement the
22 provisions of this article.

CHAPTER 208

(Com. Sub. for S.B. 265 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §11-6H-1, §11-6H-
2, §11-6H-3, §11-6H-4, §11-6H-4a, §11-6H-5, §11-6H-5a,
§11-6H-6 and §11-6H-7, all relating to the method of valuation
of certain aircraft; providing definitions; providing
methodology for valuation of certain aircraft; stating that the
initial determination of valuation is to be made by the county
assessor; providing for an initial determination by the Board of
Public Works for certain aircraft; authorizing the protest and
appeal of the assessor's decision; providing for an appeal to the
Board of Public Works; requiring an economic report on the
economic benefit of the valuation methodology; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-6H-1, §11-6H-2, §11-6H-3, §11-6H-4, §11-6H-4a, §11-6H-5, §11-6H-5a, §11-6H-6 and §11-6H-7, all to read as follows:

ARTICLE 6H. VALUATION OF SPECIAL AIRCRAFT PROPERTY.

§11-6H-1. Short title.
§11-6H-2. Definitions.
§11-6H-3. Valuation of special aircraft property.
§11-6H-4. Initial determination by county assessor.
§11-6H-4a. Initial determination by the Board of Public Works.
§11-6H-5. Protest and appeal.
§11-6H-5a. Protest and appeal to the Board of Public Works.
§11-6H-7. Effective date.

§11-6H-1. Short title.

    This article shall be known and cited as the Special Aircraft Property Valuation Act.

§11-6H-2. Definitions.

    (a) When used in this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

    (b) Terms defined. --

    (1) “Aircraft” means a weight-carrying structure for navigation of the air that is supported by the dynamic action
of the air against its surfaces and includes, but is not limited
to, an airplane or helicopter. For the purposes of this article,
the term "aircraft" does not include dirigibles, balloons, kites,
rockets, gliders, ornithopters, fan wing vehicles, autogyros
and powered lift vehicles other than helicopters.

(2) “Airplane” means a fixed-wing aircraft heavier than
air that is driven by a propeller or by jet, turbojet, turbofan,
ram jet, pulse jet, scramjet or rocket engine and supported by
the dynamic reaction of air against its wings.

(3) “Commercial airline” means an air transportation
system used to transport people and tangible personal
property for profit and includes carriers that operate with
fixed routes and flight schedules as well as charter carriers.

(4) “Helicopter” means an aircraft whose support in the
air is derived chiefly from the aerodynamic forces acting on
one or more rotors turning about on substantially vertical
axes.

(5) “Private carrier” means any firm, partnership, joint
venture, joint stock company, any public or private
corporation, cooperative, trust, business trust or any other
group or combination acting as a unit that is engaged in a
primary business other than commercial air transportation
that operates an aircraft for the transportation of employees
or others for business purposes.

(6) "Salvage value" means the lower of fair market
salvage value or five percent of the original cost of the
property.

(7) “Special aircraft property” means all aircraft owned
or leased by commercial airlines or private carriers.
§11-6H-3. Valuation of special aircraft property.

Notwithstanding any other provision of this code to the contrary, the value of special aircraft property, for the purpose of ad valorem property taxation under this chapter and under article X of the Constitution of the State of West Virginia, shall be its salvage value.

§11-6H-4. Initial determination by county assessor.

The assessor of the county in which a specific item of property is located shall determine, in writing, whether that specific item of property is special aircraft property subject to valuation in accordance with this article. Upon making a determination that a taxpayer has special aircraft property, the county assessor shall notify the Tax Commissioner of that determination and shall provide information as the Tax Commissioner requires relating to that determination.

§11-6H-4a. Initial determination by the Board of Public Works.

For special aircraft property subject to assessment by the Board of Public Works as provided for in article six of this chapter, the board shall determine, in writing, whether that specific item of property is special aircraft property subject to valuation in accordance with this article. Upon making a determination that a taxpayer has special aircraft property, the Board of Public Works shall notify the Tax Commissioner of that determination and shall provide information as the Tax Commissioner requires relating to that determination.

§11-6H-5. Protest and appeal.

At any time after the property is returned for taxation, but prior to the first day of January of the assessment year, any
taxpayer may apply to the county assessor for information regarding the issue of whether any particular item or items of property constitute special aircraft property under this article which is subject to valuation in accordance with this article. If the taxpayer believes that some portion of the taxpayer's property is subject to the provisions of this article, the taxpayer may file objections in writing with the county assessor. The county assessor shall decide the matter by either sustaining the protest and making proper corrections or by stating, in writing if requested, the reasons for the county assessor's refusal. The county assessor may, and if the taxpayer requests, the county assessor shall, before the first day of January of the assessment year, certify the question to the Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements. The sworn statement or statements shall contain a full description of the property and its uses and any other information the Tax Commissioner requires.

The Tax Commissioner shall, as soon as possible upon receipt of the question, but in no case later than the twenty-eighth day of February of the assessment year, instruct the county assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the county assessor are binding upon the county assessor, but either the county assessor or the taxpayer may apply to the circuit court of the county for review of the question of the applicability of this article to the property in the same fashion as is provided for appeals from the county commission in section twenty-five, article three of this chapter. The Tax Commissioner shall prescribe forms on which the questions under this section shall be certified and the Tax Commissioner has the authority to pursue any inquiry and procure any information which may be necessary for disposition of the matter.
§11-6H-5a. Protest and appeal to the Board of Public Works.

At any time after the property is returned for taxation, but prior to the first day of January of the assessment year, any public service business taxpayer may apply to the Board of Public Works for information regarding the issue of whether any particular item or items of property constitute special aircraft property under this article which is subject to valuation in accordance with this article. If the taxpayer believes that some portion of the taxpayer’s property is subject to the provisions of this article, the taxpayer may file objections in writing with the board. The board shall decide the matter by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for the board’s refusal.

Any taxpayer claiming to be aggrieved by any decision may apply by petition in writing, duly verified, to the circuit court of the county in which the property is situated, or if the property be situated in more than one county then in the county in which the largest assessment of the owner or operator was made in the next preceding year, for an appeal from the assessment and valuation made of all property, in the same fashion as is provided for appeals from the board in section twelve, article six of this chapter.


The West Virginia Aeronautics Commission shall provide to the Joint Committee on Government and Finance by the first day of March, two thousand twelve, and on the first day of March of each of the two subsequent years, a report detailing the economic benefit of the valuation method specified in this article. The report is to include the number of new jobs created, number of additional aircraft relocated to West Virginia, number of new hangars built and the ad valorem property tax impact.
$11-6H-7. Effective date.

This article shall be effective for assessment years commencing on and after the first day of July, two thousand nine.

CHAPTER 209
(Com. Sub. for S.B. 239 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5, §11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10 and §11-6I-11; and to amend said code by adding thereto a new section, designated §11-21-24, all relating to the taxation of real property owned by senior citizens; providing definitions; providing deferment for payment of property tax increment; specifying that the senior citizen property tax relief tax credit may be applied in lieu of such deferment; authorizing rules; requiring application for the deferment; providing for deferment renewal and waiver of deferment; providing procedures for the review and approval of application by the assessor; providing an appeals procedure; authorizing creation of a lien on property for which deferment is approved; specifying conditions for liens and lien payment and termination; requiring the Tax Commissioner to prescribe necessary forms and instructions; authorizing the Tax Commissioner to propose legislative rules; establishing criminal penalties; authorizing severability of provisions of the
article; creating the Senior Citizen Property Tax Relief Credit Act; providing definitions; providing tax credit against personal income tax for payment of a specified property tax increment under certain circumstances; specifying that the Senior Citizen Property Tax Payment Deferment may be applied in lieu of such credit; requiring application for the tax credit; providing for tax credit renewal; providing procedures for the review and approval of application by the assessor; providing an appeals procedure; requiring the Tax Commissioner to prescribe necessary forms and instructions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5, §11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10 and §11-6I-11; and that said code be amended by adding thereto a new section, designated §11-21-24, all to read as follows:

ARTICLE 6I. SENIOR CITIZEN PROPERTY TAX PAYMENT DEFERMENT ACT.

§11-6I-1. Short title.
§11-6I-2. Definitions.
§11-6I-3. Property tax payment deferment.
§11-6I-4. Application for deferment; renewals; waiver of deferment.
§11-6I-5. Determination; notice of denial of application for deferment.
§11-6I-6. Appeals procedure.
§11-6I-7. Termination of deferment.
§11-6I-8. Property tax books; lien on property.
§11-6I-9. Forms, instructions and regulations.
§11-6I-10. Criminal penalties; restitution.
§11-61-1. Short title.

1 This article shall be known as the Senior Citizen Property Tax Payment Deferment Act.

§11-61-2. Definitions.

1 As used in this article, the following terms shall have the meaning ascribed to them in this section, unless the context in which the term is used clearly requires a different meaning or a specific different definition is provided:

2. (1) "Assessed value" means the value of property as determined under article three of this chapter.

3. (2) "Deferment" means a delay or postponement.

4. (3) "Homestead" means a homestead qualified for the homestead property tax exemption authorized in article six-b of this chapter, but limited to a single-family residential house, including a mobile or manufactured or modular home, and the land, not exceeding one acre, surrounding such structure that is owned by the owner of the single-family residential house, including a mobile or manufactured or modular home; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned by another.

5. (4) "Owner" means the person who is possessed of the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust 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 shall also be considered the owner. Personal property mortgaged or
pledged shall, for the purpose of taxation, be considered the property of the party in possession.

(5) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment day.

(6) "Tax increment" means the increase of ad valorem taxes assessed on the homestead, determined as the difference between the ad valorem taxes assessed on the homestead for the current tax year and the ad valorem taxes assessed on the homestead for the tax year immediately preceding the tax year for which the taxpayer’s application for property tax deferment specified in this article is approved by the assessor, or otherwise finally approved in accordance with the provisions of this article.

(7) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than six consecutive months of the calendar year prior to the date of application by the owner thereof; and that subsequent to making application for deferment, the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use.

(8) "Tax year" means the calendar year following the July first assessment day.

§11-6I-3. Property tax payment deferment.

(a) The following homesteads shall qualify for the deferment provided in subsection (b) of this section:

(1) Any homestead owned by an owner sixty-five years of age or older and used and occupied exclusively for residential purposes by such owner; and
(2) Any homestead that:

(A) Is owned by an owner sixty-five years of age or older who, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility;

(B) Was most recently used and occupied exclusively for residential purposes by the owner or the owner's spouse; and

(C) Has been retained by the owner for noncommercial purposes.

(b) (1) For tax years commencing on or after the first day of January, two thousand nine, the owner of a homestead meeting the qualifications set forth in subsection (a) of this section may apply for a deferment in the payment of the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead: Provided, That the deferment may be authorized only when the tax increment is the greater of three hundred dollars or ten percent or more: Provided, however, That all deferred taxes are not subject to any rate of interest.

(2) In lieu of the deferment of the tax increment authorized pursuant to this article, a taxpayer entitled to such deferment may elect to instead apply the senior citizen property tax relief credit authorized under section twenty-four, article twenty-one of this chapter. Any taxpayer making such election shall be fully subject to the terms and limitations set forth in section twenty-four, article twenty-one of this chapter.

§11-61-4. Application for deferment; renewals; waiver of deferment.
(a) General. -- No deferment may be allowed under this article unless an application for deferment is filed with the assessor of the county in which the homestead is located, on or before the first day of November following mailing of the tax ticket in which the tax increment that is the subject of the application is contained, such tax ticket being mailed pursuant to section eight, article one, chapter eleven-a of this code. In the case of sickness, absence or other disability of the owner, the application may be filed by the owner or his or her duly authorized agent.

(b) Renewals. -- After the owner has filed an application for deferment with his or her assessor, there shall be no need for that owner to refile an application for the taxes so deferred.

(c) Waiver of deferment. -- Any person otherwise qualified who does not apply for deferment from payment of a tax increment on or before the first day of November as specified in this article is considered to have waived his or her right to apply for deferment from such payment for that tax year.

§11-61-5. Determination; notice of denial of application for deferment.

(a) The assessor shall, as soon as practicable after an application for deferment is filed, review that application and either approve or deny it. The assessor shall approve or disapprove an application for deferment within thirty days of receipt. Any application not approved or denied within thirty days is deemed approved. If the application is denied, the assessor shall promptly, but not later than the first day of January, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county commission, should the owner desire to take an appeal. The notice required or authorized by this section shall
be served on the owner or his or her authorized representative either by personal service or by certified mail.

(b) In the event that the assessor has information sufficient to form a reasonable belief that an owner, after having been originally granted a deferment, is no longer eligible for the deferment, he or she shall, within thirty days after forming this reasonable belief, revoke the deferment and serve the owner with written notice explaining the reasons for the revocation and furnish a form for filing with the county commission should the owner desire to take an appeal.

§11-6I-6. Appeals procedure.

(a) Notice of appeal; thirty days. -- Any owner aggrieved by the denial of his or her claim for application for deferment or the revocation of a previously approved deferment may appeal to the county commission of the county within which the property is situated. All such appeals shall be filed within thirty days after the owner’s receipt of written notice of the denial of an application or the revocation of a previously approved deferment, as applicable, pursuant to section five of this article.

(b) Review; determination; appeal. -- The county commission shall complete its review and issue its determination as soon as practicable after receipt of the notice of appeal, but in no event later than the twenty-eighth day of February following the tax year for which the deferment was sought. In conducting its review, the county commission may hold a hearing on the application. The assessor or the owner may apply to the circuit court of the county for review of the determination of the county commission in the same manner as is provided for appeals from the county commission in section twenty-five, article three of this chapter.
§11-61-7. Termination of deferment.

1. Any deferment approved in accordance with the provisions of section five of this article shall terminate immediately when any of the following events occur:

1. (1) The death of the owner of the property for which the deferment was authorized;

2. (2) The sale of the property for which the deferment was approved;

3. (3) A determination by the assessor that the property for which the deferment was approved no longer qualifies for the deferment in accordance with the provisions of this article;

4. (4) The owner of the property for which the deferment was approved fails to maintain a fire insurance policy on the property that, if the property is destroyed, is sufficient to pay all debts for which the property is used as collateral and all tax increments that have been deferred and other charges provided by law;

5. (5) The owner of the property for which the deferment was approved fails to maintain a flood insurance policy that, if the property is destroyed, is sufficient to pay all debts for which the property is used as collateral and all tax increments that have been deferred and other charges provided by law: Provided, That the provisions of this subdivision shall apply only to the following property: (A) Property within a flood elevation that has a one percent chance of being equaled or exceeded each year, as determined by the Federal Emergency Management Agency; (B) property within a one hundred year floodplain as designated by the Federal Emergency Management Agency; or (C) property within a special flood hazard area as determined by the Federal Emergency Management Agency or as shown on the most current

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity does not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-24. Senior citizen property tax relief credit.

(a) Definitions. -- As used in this section, the following terms shall have the meaning ascribed to them in this subsection, unless the context in which the term is used clearly requires a different meaning or a specific different definition is provided:

(1) "Assessed value" means the value of property as determined under article three of this chapter.

(2) "Real property taxes paid" means, for the tax years beginning on or after the first day January, two thousand nine, 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.

(3) "Senior citizen property tax relief tax credit" means the tax credit authorized under this section.
(4) "Gross household income" means gross household income as defined in section twenty-three of this article.

(5) "Homestead" means a homestead qualified for the homestead property tax exemption authorized in article six-b of this chapter, but limited to a single-family residential house, including a mobile or manufactured or modular home, and the land, not exceeding one acre, surrounding such structure that is owned by the owner of the single-family residential house, including a mobile or manufactured or modular home; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned by another.

(6) "Owner" or “homeowner” means the person who is possessed of the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust 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 shall also be considered the owner. Personal property mortgaged or pledged shall, for the purpose of taxation, be considered the property of the party in possession.

(7) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment day.

(8) "Tax increment" means the increase of ad valorem taxes assessed on the homestead, determined as the difference between the ad valorem taxes assessed on the homestead for the current tax year and the ad valorem taxes assessed on the homestead for the tax year immediately preceding the tax year for which the taxpayer’s application for tax credit specified in this section is approved by the
assessor, or otherwise finally approved in accordance with the provisions of this article.

(9) "Tax year" means the property tax calendar year following the July first assessment day.

(10) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than six consecutive months of the calendar year prior to the date of application by the owner thereof; and that subsequent to making application for tax credit, the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use.

(b) Refundable credit. -- Subject to the requirements and limitations of this section, for the tax years beginning on or after the first day of January, two thousand nine, any homeowner having a gross household income equal to or less than twenty-five thousand dollars for the tax year, 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 that are attributable to the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead: Provided, That the gross household income shall be adjusted annually in accordance with the consumer price index. The credit shall be applied against the personal income tax in the personal income tax year of the taxpayer when the property tax increment was actually paid.

(1) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than ten dollars.

(2) 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.
(3) Notwithstanding the provisions of section twenty-one or section twenty-three of this article, for property tax years that begin on or after the first day of January, two thousand nine, a homeowner is eligible to benefit from this section, section twenty-one or twenty-three of this article, whichever section provides the most benefit as determined by the homeowner. No homeowner may receive benefits under this section, section twenty-one or twenty-three of this article during the same taxable year. Nothing in this section shall be interpreted to deny any lawfully entitled taxpayer of the homestead exemption provided in section three, article six-b of this chapter.

(c) Qualification for credit. --

(1) The following homesteads shall qualify for the tax credit provided in this section:

(A) Any homestead owned by an owner sixty-five years of age or older and used and occupied exclusively for residential purposes by such owner; and

(B) Any homestead that:

(i) Is owned by an owner sixty-five years of age or older who, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility;

(ii) Was most recently used and occupied exclusively for residential purposes by the owner or the owner's spouse; and

(iii) Has been retained by the owner for noncommercial purposes.

(2) (A) For tax years commencing on or after the first day of January, two thousand nine, the owner of a homestead
meeting the qualifications set forth in subdivision (1) of this subsection may apply for a tax credit in the amount of the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead, subject to the limitations set forth in this section: Provided, That the tax credit may be authorized only when the tax increment is the greater of three hundred dollars or ten percent or more.

(B) In lieu of the tax credit authorized under this section, a taxpayer entitled to such credit may elect to instead apply the deferment of the tax increment authorized pursuant to article six-h of this chapter. Any taxpayer making such election shall be fully subject to the terms and limitations set forth in article six-h of this chapter.

(d) Application for tax credit; renewals; waiver of tax credit. --

(1) General. -- No tax credit may be allowed under this section unless an application for tax credit is filed with the assessor of the county in which the homestead is located, on or before the first day of November following mailing of the tax ticket in which the tax increment that is the subject of the application is contained, such tax ticket being mailed pursuant to section eight, article one, chapter eleven-a of this code. In the case of sickness, absence or other disability of the owner, the application may be filed by the owner or his or her duly authorized agent.

(2) Renewals. -- After the owner has filed an application for tax credit with his or her assessor, there shall be no need for that owner to refile an application for the tax credit. However, the taxpayer shall in all cases be required to file a personal income tax return in order to claim the credit in any tax year.
(e) Determination; notice of denial of application for tax credit. --

(1) The assessor shall, as soon as practicable after an application for tax credit is filed, review that application and either approve or deny it. If the application is denied, the assessor shall promptly, but not later than the first day of January, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county commission, should the owner desire to take an appeal. The notice required or authorized by this section shall be served on the owner or his or her authorized representative either by personal service or by certified mail. The assessor shall approve or disapprove an application for tax credit within thirty days of receipt. Any application not approved or denied within thirty days is deemed approved.

(2) In the event that the assessor has information sufficient to form a reasonable belief that an owner, after having been originally granted a tax credit, is no longer eligible for the tax credit, he or she shall, within thirty days after forming this reasonable belief, revoke the tax credit and serve the owner with written notice explaining the reasons for the revocation and furnish a form for filing with the county commission should the owner desire to take an appeal.

(f) Appeals procedure. --

(1) Notice of appeal; thirty days. -- Any owner aggrieved by the denial of his or her claim for application for tax credit or the revocation of a previously approved tax credit may appeal to the county commission of the county within which the property is situated. All such appeals shall be filed within thirty days after the owner’s receipt of written notice of the denial of an application or the revocation of a previously approved tax credit, as applicable, pursuant to subsection (e) of this section.
(2) Review; determination; appeal. -- The county commission shall complete its review and issue its determination as soon as practicable after receipt of the notice of appeal, but in no event later than the twenty-eighth day of February following the tax year for which the tax credit was sought. In conducting its review, the county commission may hold a hearing on the application. The assessor or the owner may apply to the circuit court of the county for review of the determination of the county commission in the same manner as is provided for appeals from the county commission in section twenty-five, article three of this chapter.

(g) Termination of tax credit. --

(1) Any tax credit approved in accordance with the provisions of this section shall terminate immediately when any of the following events occur:

(A) The death of the owner of the property for which the tax credit was authorized;

(B) The sale of the property for which the tax credit was approved; or

(C) A determination by the assessor that the property for which the tax credit was approved no longer qualifies for the tax credit in accordance with the provisions of this section.

(h) Forms, instructions and regulations. -- The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section. Additionally, the Tax Commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as the Tax Commissioner considers necessary for the implementation of this section.
(i) **Criminal penalties; restitution.** --

1. **False or fraudulent claim for tax credit.** -- Any owner who willfully files a fraudulent application for tax credit and any person who knowingly assisted in the preparation or filing of such fraudulent application for tax credit or who knowingly supplied information upon which the fraudulent application for tax credit was prepared or allowed is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty nor more than five hundred dollars, or imprisoned in jail for not more than one year, or both fined and imprisoned.

2. In addition to the criminal penalties provided above, upon conviction of any of the above offenses, the court shall order that the defendant make restitution unto this state for all taxes not paid due to an improper tax credit, or continuation of a tax credit, for the owner and interest thereon at the legal rate until paid.

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**CHAPTER 210**

*(H.B. 3201 - By Delegates Shaver and Argento)*

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11-10-5z and §11-10-7d; to amend and reenact §11-12-5 of said code; to amend said code by adding thereto a new section, designated §11-15-9j; to amend and reenact §11-15-16 of said code; and to amend and reenact §11-21-74 of said code, all relating to the procedure, assessment, collection, efficient administration and technical
advancements for certain taxes; requiring electronic filing of tax returns when the taxpayer meets a certain threshold amount of taxes due; authorizing combined tax assessments; authorizing promulgation of rules to determine the application of partial payments of taxes; authorizing the limitation on assessments to apply separately to each tax in a combined assessment; authorizing the recordation of one lien for all taxes in a combined assessment; prohibiting filing incomplete business registration certificate; specifying the time period for which the business registration certificate is granted; specifying authority of the Tax Commissioner to suspend or cancel certificate; eliminating the periodic biennial business registration certificate renewal requirement; specifying a penalty applied upon issuance, renewal or reinstatement of the business registration certificate pursuant to involuntary cancellation, revocation or suspension of the business registration certificate; prohibiting filing incomplete returns for consumers sales and service tax and use tax; authorizing the Tax Commissioner to refuse, revoke, suspend or refuse to renew a business registration certificate for a business that is the alter ego, nominee or instrumentality of a business in certain situations; and defining alter ego; allowing assertion of the consumers sales and use tax exemptions authorized under section nine-i, article fifteen, chapter eleven of the Code of West Virginia to be asserted by use of a direct pay permit; requiring the Tax Commissioner to design a combined reporting form; requiring taxpayers to use the form specified by the Tax Commissioner; authorizing the Tax Commissioner to promulgate necessary rules; and prohibiting filing incomplete filing of withholding tax returns.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §11-10-5z and §11-10-7d; that §11-12-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9j; that §11-15-16 of said code be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:
ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5z. Electronic filing for certain persons.

(a) For tax years beginning on or after the first day of January, two thousand nine, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than one hundred thousand dollars during the immediately preceding taxable year shall file electronically all returns for all taxes administered under this article.

(b) The Tax Commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she determines necessary. All rules shall be promulgated pursuant to article three, chapter twenty-nine-a of this code.

§11-10-7d. Combining assessments.

(a) The Tax Commissioner may, subsequent to any investigation authorized by subsection (a), section seven of this article that results in an assessment in each of two or more taxes administered pursuant to this article, combine those assessments into a combined single assessment. In order to complete any investigation, the Tax Commissioner may review and combine returns for the taxes that are the subject of the investigation.

*CLERK’S NOTE: These sections were also amended by SB 545 (Chapter 211), which passed prior to this act.
(b) If the Tax Commissioner has combined two or more returns as authorized by subsection (a) of this section, the tax remitted shall be applied against taxes in the order provided in a rule promulgated by the Tax Commissioner under the authority of article three, chapter twenty-nine-a of this code.

(c) If the Tax Commissioner issues a combined single assessment as authorized in subsection (a) of this section, the limitations on assessment provided in section fifteen of this article shall apply separately to each tax liability included in the single assessment.

(d) If the Tax Commissioner issues a single assessment as authorized in subsection (a) of this section and the assessment becomes final pursuant to the provisions of section eight of this article, the Tax Commissioner is authorized to pursue collection of the tax resulting from the combined assessment as authorized by this article, including, but not limited to, sections eleven and thirteen of this article, and to record one lien, pursuant to section twelve of this article, that includes all unpaid amounts of all finalized tax liabilities included in that combined assessment.

ARTICLE 12. BUSINESS REGISTRATION TAX.

*§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend or cancel certificate; certificate to be permanent until cessation of business for which certificates are granted or revocation, suspension or cancellation by the Tax Commissioner; penalty for involuntary loss of license due to failure to pay required fees and taxes relating to business.

*Clerk's Note: This section was also amended by SB 545 (Chapter 211), which passed prior to this act.
(a) Registration period. -- All business registration certificates issued under the provisions of section four of this article are for the period of one year beginning the first day of July and ending the thirtieth day of the following June:

Provided, That beginning on or after the first day of July, one thousand nine hundred ninety-nine, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on the first day of July of an even-numbered calendar year, then the Tax Commissioner may issue a renewal certificate to that business for the period beginning the first day of July, one thousand nine hundred ninety-nine, and ending the thirtieth day of June, two thousand, upon receipt of fifteen dollars for each such one-year certificate. Notwithstanding any other provisions of this code to the contrary, any certificate of registration granted on or after the first day of July, two thousand ten, shall not be subject to the foregoing requirement that it be renewed, but shall be permanent until cessation of the business for which the certificate of registration was granted or until it is suspended, revoked or cancelled by the Tax Commissioner. Notwithstanding any provision of this code to the contrary, on or after the first day of July, two thousand ten, reference to renewal of the business registration certificate shall refer to the issuance of a new business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or to reinstatement of a business registration certificate or to reinstatement of a business certificate previously suspended by the Tax Commissioner. On or after the first day of July, two thousand ten, the business registration certificate shall be issued upon payment of a tax of thirty dollars to the Tax Commissioner for new issuances of the business registration certificate or for issuances of the business registration certificate pursuant to expiration, cancellation or revocation.
of a prior business registration certificate or for reinstatement
of a business registration certificate previously suspended by
the Tax Commissioner, along with any applicable delinquent
fees, interest, penalties and additions to tax.

(b) Revocation or suspension of certificate. --

(1) The Tax Commissioner may cancel or suspend a
business registration certificate at any time during a
registration period if:

(A) The registrant filed an application for a business
registration certificate, or an application for renewal thereof,
that was false or fraudulent.

(B) The registrant willfully refused or neglected to file a
tax return or to report information required by the Tax
Commissioner for any tax imposed by or pursuant to this
chapter.

(C) The registrant willfully refused or neglected to pay
any tax, additions to tax, penalties or interest, or any part
thereof, when they became due and payable under this
chapter, determined with regard to any authorized extension
of time for payment.

(D) The registrant neglected to pay over to the Tax
Commissioner on or before its due date, determined with
regard to any authorized extension of time for payment, any
tax imposed by this chapter which the registrant collects from
any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it by
article fifteen or fifteen-a of this chapter to be exempt from
payment of the taxes imposed by such articles on some or all
of the registrant’s purchases for use in business upon issuing
to the vendor a properly executed exemption certificate, by
failing to timely pay use tax on taxable purchase for use in
69 business or by failing to either pay the tax or give a properly
70 executed exemption certificate to the vendor.

71 (F) The registrant has failed to pay in full delinquent
72 personal property taxes owing for the calendar year.

73 (2) On or after the first day of July, two thousand ten, a
74 prospective registrant or a former registrant for which a
75 business registration certificate has been suspended,
76 cancelled or revoked pursuant to the provisions of this article
77 may apply for a new business registration certificate or for
78 reinstatement of a suspended business registration certificate
79 upon payment of all outstanding delinquent fees, taxes,
80 interest, additions to tax and penalties, in addition to payment
81 to the Tax Commissioner of a penalty in the amount of one
82 hundred dollars. The Tax Commissioner may issue a new
83 business registration certificate or reinstate a suspended
84 business registration certificate if the prospective or former
85 registrant has provided security acceptable to and authorized
86 by the Tax Commissioner, payable to the Tax Commissioner,
87 sufficient to secure all delinquent fees, taxes, interest,
88 additions to tax and penalties owed by the prospective
89 registrant. The Tax Commissioner may issue a new business
90 registration certificate or reinstate a suspended business
91 registration certificate if the prospective or former registrant
92 has entered into a payment plan approved by the Tax
93 Commissioner by which liability for all delinquent fees,
94 taxes, interest, additions to tax and penalties will be paid in
95 due course and without significant delay. Failure of any
96 registrant to comply with a payment plan pursuant to this
97 provision shall be grounds for immediate suspension or
98 revocation of the registrant's business registration certificate.

99 (3) On and after the first day of July, two thousand ten, a
100 prospective registrant or a former registrant for which a
101 business registration certificate has been suspended,
102 cancelled or revoked pursuant to the provisions of any article
103 of this code other than this article may apply for a new
business registration certificate or for reinstatement of a suspended business registration certificate, only if the prospective or former registrant has complied with all applicable statutory and regulatory requirements for renewal, issuance or reinstatement of the business registration certificate and upon payment to the Tax Commissioner of a penalty in the amount of one hundred dollars.

(4) Except pursuant to exceptions specified in this code, before canceling, revoking or suspending any business registration certificate, the Tax Commissioner shall give written notice of his or her intent to suspend, revoke or cancel the business registration certificate of the taxpayer, the reason for the suspension, revocation or cancellation, the effective date of the cancellation, revocation or suspension and the date, time and place where the taxpayer may appear and show cause why such business registration certificate should not be canceled, revoked or suspended. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the effective date of the cancellation, revocation or suspension. The taxpayer may appeal cancellation, revocation or suspension of its business registration certificate in the same manner as a notice of assessment is appealed under article ten-a of this chapter. The filing of a petition for appeal does not stay the effective date of the suspension, revocation or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the registrant upon finding that state revenues will not be jeopardized by the granting of the stay. The Tax Commissioner may, in his or her discretion and upon such terms as he or she may specify, agree to stay the effective date of the cancellation, revocation or suspension until another date certain.

(5) On or before the first day of July, two thousand five, the Tax Commissioner shall propose for promulgation legislative rules establishing ancillary procedures for the Tax
Commissioner’s suspension of business registration certificates for failure to pay delinquent personal property taxes pursuant to paragraph (F), subdivision (1) of this section. The rules shall at a minimum establish any additional requirements for the provision of notice deemed necessary by the Tax Commissioner to meet requirements of law; establish protocols for the communication and verification of information exchanged between the Tax Commissioner, sheriffs and others; and establish fees to be assessed against delinquent taxpayers that shall be deposited into a special fund which is hereby created and expended for general tax administration by the Tax Division of the Department of Tax and Revenue and for operation of the Tax Division. Upon authorization of the Legislature, the rules shall have the same force and effect as if set forth herein. No provision of this subdivision may be construed to restrict in any manner the authority of the Tax Commissioner to suspend such certificates for failure to pay delinquent personal property taxes under paragraph (C) or (F), subdivision (1) of this section or under any other provision of this code prior to the authorization of the rules.

(c) _Refusal to renew._ -- The Tax Commissioner may refuse to issue or renew a business registration certificate if the registrant is delinquent in the payment of any tax administered by the Tax Commissioner under article ten of this chapter or the corporate license tax imposed by article twelve-c of this chapter, until the registrant pays in full all the delinquent taxes including interest and applicable additions to tax and penalties. In his or her discretion and upon terms as he or she specifies, the Tax Commissioner may enter into an installment payment agreement with the taxpayer in lieu of the complete payment. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the amount remaining due thereunder immediately due and payable and the Tax Commissioner may suspend or cancel the business registration certificate in the manner provided in this section.
(d) **Refusal to renew due to delinquent personal property tax.** — The Tax Commissioner shall refuse to issue or renew a business registration certificate when informed in writing, signed by the county sheriff, that personal property owned by the applicant and used in conjunction with the business activity of the applicant is subject to delinquent property taxes. The Tax Commissioner shall forthwith notify the applicant that the commissioner will not act upon the application until information is provided evidencing that the taxes due are either exonerated or paid.

(e) **Refusal to issue, revocation, suspension and refusal to renew business registration certificate of alter ego, nominee or instrumentality of a business that has previously been the subject of a lawful refusal to issue, revocation, suspension or refuse to renew.**

(1) The Tax Commissioner may refuse to issue a business registration certificate, or may revoke a business registration certificate or may suspend a business registration certificate or may refuse to renew a business registration certificate for any business determined by the Tax Commissioner to be an alter ego, nominee or instrumentality of a business that has previously been the subject of a lawful refusal to issue a business registration certificate or of a lawful revocation, suspension or refusal to renew a business registration certificate pursuant to this section, and for which the business registration certificate has not been lawfully reinstated or reissued.

(2) For purposes of this section, a business is presumed to be an alter ego, nominee or instrumentality of another business or other businesses if:

(A) More than twenty percent of the real assets or more than twenty percent of the operating assets or more than twenty percent of the tangible personal property of one business are or have been transferred to the other business or
211 businesses, or are or have been used in the operations of the
212 other business or businesses, or more than twenty percent of
213 the real assets or more than twenty percent of the operating
214 assets or more than twenty percent of the tangible personal
215 property of one business are or have been used to
216 collateralize or secure debts or obligations of the other
217 business or businesses;
218
219 (B) Ownership of the businesses is so configured that the
220 attribution rules of either Internal Revenue Code section 267
221 or Internal Revenue Code section 318 would apply to cause
222 ownership of the businesses to be attributed to the same
223 person or entity; or
224
225 (C) Substantive control of the businesses is held or
226 retained by the same person, entity or individual, directly or
227 indirectly, or through attribution under paragraph (B) of this
228 subdivision.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9j. Direct pay permits for health care providers.

Any person having a right or claim to any exemption set
forth in section nine-i of this article 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 and section three-d of article
fifteen-a of this chapter, give to the vendor his or her West
Virginia direct pay permit number.

*§11-15-16. Tax return and payment; exception; requiring a combined return.

(a) Payment of tax. -- Subject to the exceptions set forth
in subsection (b) of this section, the taxes levied by this

*Clerk’s Note: These sections were also amended by SB 545 (Chapter
211), which passed prior to this act.
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;
(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.

(d) *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.

(e) *Deposit of collected tax.* -- Tax collected by the Tax Commissioner shall be deposited as provided in section thirty of this article, except that:

(1) Tax collected on sales of gasoline and special fuel shall be deposited in the state road fund; and

(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.

(f) *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.

(g) *Accelerated payment.* --
(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 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.

(2) 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.

(3) 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.

(4) 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.

PART I. GENERAL.

*§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 the calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. Where the average quarterly amount 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. 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 determines necessary for the protection of the revenues,

*Clerk's Note: This section was also amended by SB 545 (Chapter 211), which passed prior to this act.
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. Notwithstanding the provisions of this subsection, on or after the first day of January, two thousand nine, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(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 required to be deducted and withheld, if the 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. Notwithstanding the provisions of this subsection, on and after the first day of January, two thousand nine, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.
(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. Notwithstanding the provisions of this subsection, on or after the first day of January, two thousand nine, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for annual returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(d) Deposit in trust for Tax Commissioner. -- Whenever any employer fails to collect, truthfully account for or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice shall remain in
effect until a notice of cancellation is served by the Tax Commissioner.

(e) Accelerated payment. -- (1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December, one thousand nine hundred ninety, every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under subsection (b) of this section exceeded one hundred thousand dollars shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June: Provided, That on and after the first day of June, two thousand seven, the provisions of this subsection 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 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 does not do so is subject to a penalty in the amount of twenty-five dollars per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to reasonable cause and not due to willful neglect.
CHAPTER 211

(Com. Sub. for S.B. 545 - By Senator Helmick)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11-10-5z and §11-10-7d; to amend and reenact §11-12-5 of said code; to amend said code by adding thereto a new section, designated §11-15-9j; to amend and reenact §11-15-16 of said code; and to amend and reenact §11-21-74 of said code, all relating to tax administration efficiency and technical advancements; requiring electronic filing of tax returns when the taxpayer meets a certain threshold amount of taxes due; authorizing combined tax assessments; authorizing promulgation of rules to determine the application of partial payments of taxes; authorizing the limitation on assessments to apply separately to each tax in a combined assessment; authorizing the recordation of one lien for all taxes in a combined assessment; allowing assertion of the consumers sales and use tax exemptions authorized under section nine-i, article fifteen, chapter eleven of the Code of West Virginia to be asserted by use of a direct pay permit; prohibiting filing incomplete business registration certificate; specifying the time period for which the business registration certificate is granted; specifying authority of the Tax Commissioner to suspend or cancel certificate; eliminating the periodic biennial business registration certificate renewal requirement; specifying a penalty applied upon issuance, renewal or reinstatement of the business registration certificate pursuant to involuntary cancellation, revocation or suspension of the business registration certificate; prohibiting filing incomplete returns for consumers sales and service tax and use tax; requiring the Tax Commissioner to design a combined
reporting form; requiring taxpayers to use the form specified by the Tax Commissioner; authorizing the Tax Commissioner to promulgate necessary rules; and prohibiting filing incomplete filing of withholding tax returns.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §11-10-5z and §11-10-7d; that §11-12-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9j; that §11-15-16 of said code be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:


15. Consumers Sales and Service Tax.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5z. Electronic filing for certain persons.
§11-10-7d. Combining assessments.

*§11-10-5z. Electronic filing for certain persons.

1 (a) For tax years beginning on or after the first day of January, two thousand nine, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than one hundred thousand dollars during the immediately preceding taxable year shall file electronically all returns for all taxes administered under this article.

*CLERK’S NOTE: This section was also amended by HB 3201 (Chapter 210), which passed subsequent to this act.
(b) The Tax Commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she determines necessary. All rules shall be promulgated pursuant to article three, chapter twenty-nine-a of this code.

*§11-10-7d. Combining assessments.*

(a) The Tax Commissioner may, subsequent to any investigation authorized by subsection (a), section seven of this article that results in an assessment in each of two or more taxes administered pursuant to this article, combine those assessments into a combined single assessment. In order to complete any investigation, the Tax Commissioner may review and combine returns for the taxes that are the subject of the investigation.

(b) If the Tax Commissioner has combined two or more returns as authorized by subsection (a) of this section, the tax remitted shall be applied against taxes in the order provided in a rule promulgated by the Tax Commissioner under the authority of article three, chapter twenty-nine-a of this code.

(c) If the Tax Commissioner issues a combined single assessment as authorized in subsection (a) of this section, the limitations on assessment provided in section fifteen of this article shall apply separately to each tax liability included in the single assessment.

(d) If the Tax Commissioner issues a single assessment as authorized in subsection (a) of this section and the assessment becomes final pursuant to the provisions of section eight of this article, the Tax Commissioner is authorized to pursue collection of the tax resulting from the combined assessment as authorized by this article, including, but not limited to, sections eleven and thirteen of this article, and to record one lien, pursuant to section twelve of this article.

*CLERK’S NOTE: This section was also amended by HB 3201 (Chapter 210), which passed subsequent to this act.*
ARTICLE 12. BUSINESS REGISTRATION TAX.

*§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend or cancel certificate; certificate to be permanent until cessation of business for which certificates are granted or revocation, suspension or cancellation by the Tax Commissioner; penalty for involuntary loss of license due to failure to pay required fees and taxes relating to business.

(a) Registration period. -- All business registration certificates issued under the provisions of section four of this article are for the period of one year beginning the first day of July and ending the thirtieth day of the following June: Provided, That beginning on or after the first day of July, one thousand nine hundred ninety-nine, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on the first day of July of an even-numbered calendar year, then the Tax Commissioner may issue a renewal certificate to that business for the period beginning the first day of July, one thousand nine hundred ninety-nine, and ending the thirtieth day of June, two thousand, upon receipt of fifteen dollars for each such one-year certificate. Notwithstanding any other provisions of this code to the contrary, any certificate of registration granted on or after the first day of July, two thousand ten, shall not be subject to the foregoing requirement that it be

*Clerk’s Note: This section was also amended by HB 3201 (Chapter 210), which passed subsequent to this act.
renewed, but shall be permanent until cessation of the business for which the certificate of registration was granted or until it is suspended, revoked or cancelled by the Tax Commissioner. Notwithstanding any provision of this code to the contrary, on or after the first day of July, two thousand ten, reference to renewal of the business registration certificate shall refer to the issuance of a new business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or to reinstatement of a business registration certificate or to reinstatement of a business certificate previously suspended by the Tax Commissioner. On or after the first day of July, two thousand ten, the business registration certificate shall be issued upon payment of a tax of thirty dollars to the Tax Commissioner for new issuances of the business registration certificate or for issuances of the business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or for reinstatement of a business registration certificate previously suspended by the Tax Commissioner, along with any applicable delinquent fees, interest, penalties and additions to tax.

(b) Revocation or suspension of certificate. --

(1) The Tax Commissioner may cancel or suspend a business registration certificate at any time during a registration period if:

(A) The registrant filed an application for a business registration certificate, or an application for renewal thereof, that was false or fraudulent.

(B) The registrant willfully refused or neglected to file a tax return or to report information required by the Tax Commissioner for any tax imposed by or pursuant to this chapter.
(C) The registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, when they became due and payable under this chapter, determined with regard to any authorized extension of time for payment.

(D) The registrant neglected to pay over to the Tax Commissioner on or before its due date, determined with regard to any authorized extension of time for payment, any tax imposed by this chapter which the registrant collects from any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant’s purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.

(F) The registrant has failed to pay in full delinquent personal property taxes owing for the calendar year.

(2) On or after the first day of July, two thousand ten, a prospective registrant or a former registrant for which a business registration certificate has been suspended, cancelled or revoked pursuant to the provisions of this article may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate upon payment of all outstanding delinquent fees, taxes, interest, additions to tax and penalties, in addition to payment to the Tax Commissioner of a penalty in the amount of one hundred dollars. The Tax Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has provided security acceptable to and authorized
by the Tax Commissioner, payable to the Tax Commissioner, sufficient to secure all delinquent fees, taxes, interest, additions to tax and penalties owed by the prospective registrant. The Tax Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has entered into a payment plan approved by the Tax Commissioner by which liability for all delinquent fees, taxes, interest, additions to tax and penalties will be paid in due course and without significant delay. Failure of any registrant to comply with a payment plan pursuant to this provision shall be grounds for immediate suspension or revocation of the registrant's business registration certificate.

(3) On and after the first day of July, two thousand ten, a prospective registrant or a former registrant for which a business registration certificate has been suspended, cancelled or revoked pursuant to the provisions of any article of this code other than this article may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate only if the prospective or former registrant has complied with all applicable statutory and regulatory requirements for renewal, issuance or reinstatement of the business registration certificate and upon payment to the Tax Commissioner of a penalty in the amount of one hundred dollars.

(4) Except pursuant to exceptions specified in this code, before canceling, revoking or suspending any business registration certificate, the Tax Commissioner shall give written notice of his or her intent to suspend, revoke or cancel the business registration certificate of the taxpayer, the reason for the suspension, revocation or cancellation, the effective date of the cancellation, revocation or suspension and the date, time and place where the taxpayer may appear and show cause why such business registration certificate should not be canceled, revoked or suspended. This written notice shall be served on the taxpayer in the same manner as a
notice of assessment is served under article ten of this chapter, not less than twenty days prior to the effective date of the cancellation, revocation or suspension. The taxpayer may appeal cancellation, revocation or suspension of its business registration certificate in the same manner as a notice of assessment is appealed under article ten-a of this chapter. The filing of a petition for appeal does not stay the effective date of the suspension, revocation or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the registrant upon finding that state revenues will not be jeopardized by the granting of the stay. The Tax Commissioner may, in his or her discretion and upon such terms as he or she may specify, agree to stay the effective date of the cancellation, revocation or suspension until another date certain.

(5) On or before the first day of July, two thousand five, the Tax Commissioner shall propose for promulgation legislative rules establishing ancillary procedures for the Tax Commissioner’s suspension of business registration certificates for failure to pay delinquent personal property taxes pursuant to paragraph (F), subdivision (1) of this section. The rules shall at a minimum establish any additional requirements for the provision of notice deemed necessary by the Tax Commissioner to meet requirements of law; establish protocols for the communication and verification of information exchanged between the Tax Commissioner, sheriffs and others; and establish fees to be assessed against delinquent taxpayers that shall be deposited into a special fund which is hereby created and expended for general tax administration by the Tax Division of the Department of Revenue and for operation of the Tax Division. Upon authorization of the Legislature, the rules shall have the same force and effect as if set forth herein. No provision of this subdivision may be construed to restrict in any manner the authority of the Tax Commissioner to suspend such certificates for failure to pay delinquent personal property taxes under paragraph (C) or (F),
subdivision (1) of this section or under any other provision of
this code prior to the authorization of the rules.

(c) Refusal to renew. -- The Tax Commissioner may
refuse to issue or renew a business registration certificate if
the registrant is delinquent in the payment of any tax
administered by the Tax Commissioner under article ten of
this chapter or the corporate license tax imposed by article
twelve-c of this chapter, until the registrant pays in full all the
delinquent taxes including interest and applicable additions
to tax and penalties. In his or her discretion and upon terms
as he or she specifies, the Tax Commissioner may enter into
an installment payment agreement with the taxpayer in lieu
of the complete payment. Failure of the taxpayer to fully
comply with the terms of the installment payment agreement
shall render the amount remaining due thereunder
immediately due and payable and the Tax Commissioner may
suspend or cancel the business registration certificate in the
manner provided in this section.

(d) Refusal to renew due to delinquent personal property
tax. -- The Tax Commissioner shall refuse to issue or renew
a business registration certificate when informed in writing,
signed by the county sheriff, that personal property owned by
the applicant and used in conjunction with the business
activity of the applicant is subject to delinquent property
taxes. The Tax Commissioner shall forthwith notify the
applicant that the commissioner will not act upon the
application until information is provided evidencing that the
taxes due are either exonerated or paid.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9j. Direct pay permits for health care providers.
§11-15-16. Tax return and payment; exception; requiring a combined return.

*§11-15-9j. Direct pay permits for health care providers.*

*Clerk’s Note: This section was also amended by HB 3201 (Chapter 210),
which passed subsequent to this act.*
Any person having a right or claim to any exemption set forth in section nine-i of this article 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 and section three-d, article fifteen-a of this chapter, give to the vendor his or her West Virginia direct pay permit number.

*§11-15-16. Tax return and payment; exception; requiring a combined return.*

(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) *Combined return required.* --

(1) The Tax Commissioner shall, no later than the fifteenth day of June, two thousand eight, design a return that combines filing of the taxes levied by this article and article fifteen-a of this chapter.

(2) Beginning the first day of July, two thousand eight, each person required to file a return required by this article or article fifteen-a of this chapter, or both this article and article fifteen-a of this chapter, shall complete and file the return required by the Tax Commissioner.

(3) The Tax Commissioner may promulgate rules pursuant to article three, chapter twenty-nine-a of this code and otherwise use any combination of notices, forms and instructions he or she determines necessary to implement the use of the form required by subsection (c) of this section.
(c) **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.

(d) **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.

(e) **Deposit of collected tax.** -- Tax collected by the Tax Commissioner shall be deposited as provided in section thirty of this article, except that:

1. Tax collected on sales of gasoline and special fuel shall be deposited in the state road fund; and
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.
(f) 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.

(g) Accelerated payment. --

(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 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.

(2) 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.
(3) 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.

(4) 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.

PART I. GENERAL.

§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 the calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax

*Clerk's Note: This section was also amended by HB 3201 (Chapter 210), which passed subsequent to this act.
Commissioner the taxes required to be deducted and withheld. Where the average quarterly amount 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. 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 determines 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. Notwithstanding the provisions of this subsection, on or after the first day of January, two thousand nine, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(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 required to
be deducted and withheld, if the 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. Notwithstanding
the provisions of this subsection, on and after the first day of
January, two thousand nine, every employer required to
deduct and withhold tax under this article shall file a
withholding return as prescribed by the Tax Commissioner
and pay over to the Tax Commissioner the taxes required to
be deducted and withheld. The due dates for returns and
payments shall be established by the Tax Commissioner to
match as closely as practicable the due dates in effect for
federal income tax purposes, in accordance with the
procedures established by the Internal Revenue Service
pursuant to Section 3402 of the Internal Revenue Code.

(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. Notwithstanding the provisions of this
subsection, on or after the first day of January, two thousand
nine, every employer required to deduct and withhold tax
under this article shall file a withholding return as prescribed
by the Tax Commissioner and pay over to the Tax
Commissioner the taxes required to be deducted and
withheld. The due dates for annual returns and payments
shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(d) Deposit in trust for Tax Commissioner. -- Whenever any employer fails to collect, truthfully account for or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(e) Accelerated payment. -- (1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December, one thousand nine hundred ninety, every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under subsection (b) of this section exceeded one hundred thousand dollars shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June: Provided, That on and after the first day of June, two thousand seven, the provisions of this subsection 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 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.
year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

(h) Any employer required to file a withholding return for two hundred fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of twenty-five dollars per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to reasonable cause and not due to willful neglect.

CHAPTER 212

(Com. Sub. for H.B. 4421 - By Delegates White and Kominar)

[Passed March 5, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12C-13; to amend and reenact §31B-1-108 of said code; to amend and reenact §59-1-2 of said code; and to amend said code by adding thereto a new section, designated §59-1-2a, all relating to the repeal of the corporate license tax; creating an annual report fee; requiring the filing of an annual report with fee payment with the Secretary of State; creating a special revenue account; providing purposes for the expenditure of certain fee collections; legislative rules; and administrative and criminal penalties.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-12C-13; that §31B-1-108 of said code be amended and reenacted; that §59-1-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §59-1-2a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-13. Repeal of article.

1 Each provision of this article is repealed for all taxable periods beginning on and after the first day of July, two thousand eight: Provided, That tax and fee liabilities arising for license tax years ending before the first day of July, two thousand eight, are determined, paid, administered, assessed and collected as if the tax imposed by this article had not been repealed, and the rights and duties of the taxpayer and the State of West Virginia are fully and completely preserved.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-108. Designated office and agent for service of process.

1 (a) A limited liability company and a foreign limited liability company authorized to do business in this state may continuously maintain in this state:
(1) An office, which need not be a place of its business in this state; and

(2) An agent and address of the agent for service of process on the company.

(b) An agent shall be an individual resident of this state, a domestic corporation, another limited liability company or a foreign corporation or foreign company authorized to do business in this state.

(c) Every limited liability company shall pay the annual report fee of twenty-five dollars for the filing of the annual report for the limited liability company as described in section two-a, article one, chapter fifty-nine of this code, which fee shall be due and payable each year after the initial registration of the limited liability company on or before the dates specified in section two-a, article one, chapter fifty-nine of this code and other applicable provisions thereof, and shall be collected by the Secretary of State and deposited in the general administrative fees account established by section two, article one, chapter fifty-nine of this code. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this chapter.

(d) The Secretary of State shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.

(f) The amendments to this section enacted in two thousand eight are effective beginning on and after the first day of July, two thousand eight.
CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.
§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

*§59-1-2. Fees to be charged by Secretary of State.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

1. For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement of business entities organized within the state, as follows:

   (A) Articles of incorporation of for-profit corporation ................................. 50.00
   (B) Articles of incorporation of nonprofit corporation ................................. 25.00
   (C) Articles of organization of limited liability company .......................... 100.00
   (D) Agreement of a general partnership ........ 50.00
   (E) Certificate of a limited partnership ....... 100.00
   (F) Agreement of a voluntary association ..... 50.00
   (G) Articles of organization of a business trust . 50.00

*CLERK'S NOTE: This section was also amended by HB 4465 (Chapter 193), which passed subsequent to this act.
(H) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax .............. 25.00

(I) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company or of certificate of limited partnership or agreement of voluntary association .............. 25.00

(J) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust ........ 25.00

(K) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law .. 25.00

(L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts ........ 25.00

(M) Plus for each additional party to the merger in excess of two ............................... 15.00

(N) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity .................. 25.00

(O) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership .................. 25.00
(P) Revocation of voluntary dissolution of a corporation, voluntary association or business trust ........ 15.00

(Q) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership ...... 25.00

(R) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution ........................................ 25.00

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

(A) Certificate of authority of for-profit corporation ........................................ 100.00

(B) Certificate of authority of nonprofit corporation ........................................ 50.00

(C) Certificate of authority of foreign limited liability companies .................. 150.00

(D) Certificate of exemption from certificate of authority ................................ 25.00

(E) Registration of a general partnership ...... 50.00

(F) Registration of a limited partnership ...... 150.00

(G) Registration of a limited liability partnership for two-year term .................. 500.00

(H) Registration of a voluntary association .... 50.00
(I) Registration of a trust or business trust ..... 50.00

(J) Amendment or correction of certificate of authority
of a foreign corporation, including change of name or
increase of capital stock, in addition to any applicable license
tax ........................................ 25.00

(K) Amendment or correction of certificate of limited
partnership, limited liability partnership, limited liability
compensation or professional limited liability company, voluntary
association or business trust .................... 25.00

(L) Registration of trade name, otherwise designated as
a true name, fictitious name or D.B.A. (doing business as)
name for any foreign business entity as permitted by
law ............................................... 25.00

(M) Amendment and restatement of certificate of
authority or of registration of a corporation, limited
partnership, limited liability partnership, limited liability
compensation or professional limited liability company,
voluntary association or business trust ............. 25.00

(N) Articles of merger of two corporations, limited
 partnerships, limited liability partnerships, limited liability
companies or professional limited liability companies,
voluntary associations or business trusts ........... 25.00

(O) Plus for each additional party to the merger in
excess of two .................................... 5.00

(P) Statement of conversion, when permitted, from one
business entity into another business entity, in addition to the
cost of filing the appropriate articles or certificate to organize
the surviving entity .............................. 25.00
(Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited liability partnership, limited liability company, voluntary association or business trust .......................... 25.00

Notwithstanding any other provision of this section to the contrary, after the thirtieth day of June, two thousand eight, the fees described in this subdivision that are collected for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company shall be deposited in the general administrative fees account established by this section.

(3) For receiving, filing and recording a change of the principal or designated office, change of the agent of process and/or change of officers, directors, partners, members or managers, as the case may be, of a corporation, limited partnership, limited liability partnership, limited liability company or other business entity as provided by law ................................. 15.00

(4) For receiving, filing and preserving a reservation of a name for each one hundred twenty days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company ....................... 15.00

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation ........................................ $10.00

(B) Certificate of existence of a domestic limited liability company, and certificate of authorization foreign limited liability company ............................. 10.00
(C) Certificate of existence of any business entity, trademark or service mark registered with the Secretary of State ..................................................... 10.00

(D) Certified copy of corporate charter or comparable organizing documents for other business entities ... 15.00

(E) Plus, for each additional amendment, restatement or other additional document ...................... 5.00

(F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership .................... 25.00

(G) And for the annual renewal of the name registration ......................................................... 10.00

(H) Any other certificate not specified in this subdivision ......................................................... 10.00

(6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:

(A) Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions ............................... $10.00

(B) Plus, for each additional certificate pertaining to the same transaction ............................... 5.00

(C) Any other certificate not specified in this subdivision ......................................................... 10.00

(D) For acceptance, indexing and recordation of service of process any corporation, limited partnership, limited liability partnership, limited liability company, voluntary
association, business trust, insurance company, person or other entity as permitted by law ................. 15.00

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State ...... 5.00

(F) For shipping and handling expenses for execution of service of process upon any defendant outside the United States by registered mail, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State ...... 15.00

(7) For a search of records of the office conducted by employees of or at the expense of the Secretary of State upon request, as follows:

(A) For any search of archival records maintained at sites other than the office of the Secretary of State, no less than ................................................... $10.00

(B) For searches of archival records maintained at sites other than the office of the Secretary of State which require more than one hour, for each hour or fraction of an hour consumed in making such search ................ 10.00

(C) For any search of records maintained on site for the purpose of obtaining copies of documents or printouts of data ...................................................... 5.00

(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor, any actual cost, but not less than ......................... 25.00
(E) The cost of the search is in addition to the cost of any copies or printouts prepared or any certificate issued pursuant to or based on the search.

(F) For recording any paper for which no specific fee is prescribed ................................... 5.00

(8) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:

(A) For a copy of any paper or printout of electronic data, if one sheet ......................... $1.00

(B) For each sheet after the first ................. .50

(C) For sending the copies or lists by fax transmission ................................................. 5.00

(D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the Secretary of State at a rate approximating 2.00 plus .10 per page and rounded to the nearest dollar.

(E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available printed format, plus, for each required disk, which shall be provided by the Secretary of State ............. 5.00

(b) The Secretary of State may propose legislative rules for promulgation for charges for on-line electronic access to database information or other information maintained by the Secretary of State.

(c) For any other work or service not enumerated in this subsection, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.
(d) The records maintained by the Secretary of State are prepared and indexed at the expense of the state and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

(e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.

(f) There is hereby continued in the State Treasury a special revenue account to be known as the “service fees and collections” account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Notwithstanding any other provision of this code to the contrary, except as provided in subsection (h) of this section and section two-a of this article, one-half of all the fees and service charges established in the following sections and for the following purposes shall be deposited by the Secretary of State or other collecting agency to that special revenue account and used for the operation of the Office of the Secretary of State:

(1) The annual attorney-in-fact fee for corporations and limited partnerships established in section five, article twelve-c, chapter eleven of this code;

(2) The fees received for the sale of the State Register, code of state rules and other copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of this code;
(3) The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and professional solicitations established in sections five, nine and fifteen-b, article nineteen, chapter twenty-nine of this code;

(4) The annual attorney-in-fact fee for limited liability companies as designated in section one hundred eight, article one, chapter thirty-one-b of this code and established in section two hundred eleven, article two of said chapter: Provided, That after the thirtieth day of June, two thousand eight, the annual report fees designated in section one hundred eight, article one, chapter thirty-one-b of this code shall upon collection be deposited in the general administrative fees account described in subsection (h) of this section;

(5) The filing fees and search and copying fees for uniform commercial code transactions established by section five hundred twenty-five, article nine, chapter forty-six of this code;

(6) The annual attorney-in-fact fee for licensed insurers established in section twelve, article four, chapter thirty-three of this code;

(7) The fees for the application and record maintenance of all notaries public established by section one hundred seven, article one, chapter twenty-nine-c of this code;

(8) The fees for the application and record maintenance of commissioners for West Virginia as established by section twelve, article four, chapter twenty-nine of this code;

(9) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;
(10) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(11) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;

(12) All fees for services, the sale of photocopies and data maintained at the expense of the Secretary of State as provided in this section; and

(13) All registration, license and other fees collected by the Secretary of State not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds five hundred thousand dollars as of the thirtieth day of June, two thousand three, and each year thereafter, shall be expired to the state fund, General Revenue Fund.

(h)(1) Effective the first day of July, two thousand eight, there is hereby created in the State Treasury a special revenue account to be known as the general administrative fees account. Expenditures from the account shall be used for the operation of the Office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand nine, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this subsection.
(2) After the thirtieth day of June, two thousand eight, all the fees and service charges established in section two-a of this article for the following purposes shall be collected and deposited by the Secretary of State or other collecting agency in the general administrative fees account and used for the operation of the Office of the Secretary of State:

(A) The annual report fees paid to the Secretary of State by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies;

(B) The fees for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a) of this section; and

(C) The fees for the purchase of data related to the State’s Business Organizations Database described in section two-a of this article.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

(a) Definitions. -- As used in this section:

(1) “Annual report fee” means the fee described in subsection (c) of this article that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies. After the thirtieth day of June, two thousand eight, any reference in this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

(2) “Business activity” means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the
activities of foreign corporations enumerated in subsection
(b), section one thousand five hundred one, article fifteen,
chapter thirty-one-d of this code, except for the activity of
conducting affairs in interstate commerce when activity
occurs in this state, nor does it mean any of the activities of
foreign limited liability companies enumerated in subsection
(a), section one thousand three, article ten, chapter thirty-one-
b of this code except for the activity of conducting affairs in
interstate commerce when activity occurs in this state.

(3) “Corporation” means a “domestic corporation”, a
“foreign corporation” or a “nonprofit corporation”.

(4) “Deliver or delivery” means any method of delivery
used in conventional commercial practice, including, but not
limited to delivery by hand, mail, commercial delivery and
electronic transmission.

(5) “Domestic corporation” means a corporation for
profit which is not a foreign corporation incorporated under
or subject to the provisions of chapter thirty-one-d of this
code.

(6) “Domestic limited liability company” means a
limited liability company which is not a foreign limited
liability company under or subject to the provisions of
chapter thirty-one-b of this code.

(7) “Foreign corporation” means a for-profit corporation
incorporated under a law other than the laws of this state.

(8) “Foreign limited liability company” means a limited
liability company organized under a law other than the laws
of this state.

(9) “Limited partnership” means a partnership as defined
by section one, article nine, chapter forty-seven of this code.
(10) “Nonprofit corporation” means a nonprofit corporation as defined by section one hundred fifty, article one, chapter thirty-one-e of this code.

(11) “Registration fee” means the fee for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a), section two of this article. The term “initial registration” also means the date upon which the registration fee is paid.

(b) Required payment of annual report fee and filing of annual report. -- After the thirtieth day of June, two thousand eight, no corporation, limited partnership, domestic limited liability company or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) Annual report fee. -- After the thirtieth day of June, two thousand eight, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of twenty-five dollars for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company or foreign limited liability company, and for such other administrative services as may be imposed by law upon the Secretary of State. The fee is due and payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to the first day of July, two thousand
eight, on or before the dates specified in subsection (e) of this section. The annual report fees received by the Secretary of State pursuant to the provisions of this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two of this article.

(d) Annual report. -- (1) After the thirtieth day of June, two thousand eight, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section. The report is due each year from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to the first day of July, two thousand eight, on or before the dates specified in subsection (e) of this section.

(2)(A) The annual report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i) The address of the corporation’s principal office; (ii) the names and mailing addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of the corporation’s parent corporation and of each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited partnerships domestic limited liability companies and foreign limited liability companies, similar information with respect to their principal or controlling interests as determined by the Secretary of State; (vi) the county or county code in which the principal office address or mailing address of the
company is located; (vii) business class code; and (viii) any other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall, upon request of any person, disclose, with respect to corporations: (i) The address of the corporation’s principal office; (ii) the names and addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of each subsidiary of the corporation and the corporation’s parent corporation; (v) the county or county code in which the principal office address or mailing address of the company is located; and (vi) the business class code. The Secretary of State shall provide similar information with respect to information in its possession relating to limited partnerships domestic limited liability companies and foreign limited liability companies, similar information with respect to their principal or controlling interests.

(e) Annual reports and fees due July 1 or April 1. -- After the thirtieth day of June, two thousand eight, each corporation and limited partnership shall file with the Secretary of State the annual report and pay the annual report fee by the first day of July, two thousand nine, and each year thereafter, and each limited liability company and foreign limited liability shall file with the Secretary of State the annual report and pay the annual report fee by the first day of April, two thousand nine, and each year thereafter: Provided, That each corporation and limited partnership that paid the registration fee prior to the first day of July, two thousand eight shall file the annual report and pay the annual report fee by the first day of July, two thousand eight, and each year thereafter.

(f) Deposit of fees. -- The annual report fees received by the Secretary of State pursuant to the provisions of this
section shall be deposited by the Secretary of State in the general administrative fees account established by section two, article one, chapter fifty-nine of this code.

(g) Duty to pay. -- It shall be the duty of each corporation, limited partnership, limited liability company and foreign limited liability company required to pay the annual report fees imposed under this article, to remit them with a properly completed annual report to the Secretary of State, and if it fails to do so it shall be subject to the penalties prescribed in subsection (h) of this article.

(h) Penalties. -- (1) The following penalties shall be in addition to any other penalties and remedies available elsewhere in this code:

(A) Administrative penalty. -- The Secretary of State shall impose upon each corporation, limited partnership, limited liability company and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative penalty in the amount of one hundred dollars per year for each year or portion thereof in which the report which is due is not filed or the fees which are owed are not paid. This penalty shall be assessed and collected in the same manner as the fees imposed under this article.

(B) Criminal penalty. -- It is a misdemeanor for each corporation, limited partnership, limited liability company or foreign limited liability company to conduct business for more than thirty consecutive calendar days without paying in full the amount of annual report fees which are due or without filing the annual report which is due. Upon conviction, each officer, agent or employee shall be fined not more than one thousand. Each day or portion thereof, after the initial period of thirty consecutive days, during which business is conducted without paying in full the amount of fees which are due, or without filing the annual report which is due,
shall constitute a separate punishable criminal offense.
Failure to file shall constitute a separate punishable criminal
offense and failure to pay shall constitute a separate
punishable criminal offense.

(2) All penalties collected under this subsection shall be
deposited into General Revenue Fund of the State Treasury
in the manner provided by law.

(i) Reports to tax commissioner; suspension,
cancellation or withholding of business registration
certificate. -- (1) The Secretary of State shall, within twenty
days after the close of each month, make a report to the Tax
Commissioner for the preceding month, in which he or she
shall set out the name of every business entity to which he or
she issued a certificate to conduct business in the State of
West Virginia during that month. The report shall set out the
names and addresses all corporations, limited partnerships,
limited liability companies and foreign limited liability
companies to which he or she issued certificates of change of
name or of change of location of principal office, dissolution,
withdrawal or merger. If the Secretary of State fails to make
the report, it shall be the duty of the Tax Commissioner to
report such failure to the Governor. A writ of mandamus
shall lie for correction of such failure.

(2) Notwithstanding any other provisions of this code to
the contrary, upon receipt of notice from the Secretary of
State that a corporation, limited partnership, limited liability
company and foreign limited liability company is more than
thirty days delinquent in the payment of annual report fees or
in the filing of an annual report required by this section, the
Tax Commissioner may suspend, cancel or withhold a
business registration certificate issued to or applied for by the
delinquent corporation, limited partnership, limited liability
company or foreign limited liability company until the same
is paid and filed in the manner provided for the suspension,
cancellation or withholding of business registration
220 certificates for other reasons under article twelve, chapter
221 eleven of this code.

222 (j) Purchase of data. -- The Secretary of State will
223 provide electronically, for purchase, any data maintained in
224 the Secretary of State’s Business Organizations Database. For
225 the electronic purchase of the entire Business Organizations
226 Database, the cost is twelve thousand dollars. For the
227 purchase of the monthly updates of the Business
228 Organizations Database, the cost is one thousand dollars per
229 month. The fees received by the Secretary of State pursuant
230 to the provisions of this subsection shall be deposited by the
231 Secretary of State in the general administrative fees account
232 established by section two, article one, chapter fifty-nine of
233 this code.

234 (k) Rules. -- The Secretary of State may propose
235 legislative rules for promulgation pursuant to article three,
236 chapter twenty-nine-a of this code to implement the
237 provisions of this article, and may, pending promulgation of
238 those rules, promulgate emergency rules pursuant to those
239 provisions for those purposes.

CHAPTER 213

(Com. Sub. for H.B. 4041 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §11-13A-3d and §11-13A-20a of the
Code of West Virginia, 1931, as amended; to amend said code
by adding thereto a new section, designated §11-13V-4a; and
to amend and reenact §31-15A-16 of said code, all relating to equalization of natural gas and coalbed methane taxation; terminating the severance and business privilege tax exemption for production of coalbed methane with certain limited exceptions; specifying that coalbed methane is taxed as natural gas for purposes of the Severance and Business Privilege Tax Act and the Workers' Compensation Debt Reduction Act with limited exceptions; authorizing Tax Commissioner to promulgate rules; requiring portion of tax be used for infrastructure projects; providing that seventy-five percent of dedicated funds be used in counties producing coalbed methane; providing that remaining twenty-five percent of dedicated funds be shared equally by counties not producing coalbed methane; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3d and §11-13A-20a 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 §11-13V-4a; and that §31-15A-16 of said code be amended and reenacted, all to read as follows:

Chapter
  11. Taxation.

CHAPTER 11. TAXATION.

Article
  13V. Workers’ Compensation Debt Reduction Act.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.
§11-13A-20a. Dedication of tax.
§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

(a) The Legislature hereby finds and declares the following:

(1) That coalbed methane is underdeveloped and an under-utilized resource within this state which, where practicable, should be captured and not be vented or wasted;

(2) The health and safety of persons engaged in coal mining is a paramount concern to the state. The Legislature intends to preserve coal seams for future safe mining, to facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state, and to ensure the safety of miners by encouraging the advance removal of coalbed methane;

(3) The United States environmental protection agency’s coalbed methane outreach program encourages United States coal mines in the United States to remove and use methane that is otherwise wasted during mining. These projects have important economic benefits for the mines and their local economies while they also reduce emissions of methane; and

(4) The initial costs of development of coalbed methane wells can be large in comparison to conventional wells and deoxygenation and water removal increase development expenditures.

The Legislature, therefore, concludes that an incentive to coalbed methane development should be implemented to encourage capture of methane gas that would otherwise be vented to the atmosphere.

(b) Imposition of tax. — In lieu of the annual privilege tax imposed on the severance of natural gas or oil pursuant to
section three-a, article thirteen-a, for the privilege of engaging or continuing within this state in the business of severing coalbed methane for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: Provided, That effective for taxable years beginning on or after the first day of January, two thousand one, there is an exemption from the imposition of the tax provided for in this article for a maximum period of five years for all coalbed methane produced from any coalbed methane well placed in service after the first day of January, two thousand. For purposes of this section, the terms "coalbed methane" and "coalbed methane well" have the meaning ascribed to them in section two, article twenty-one, chapter twenty-two of this code. The exemption from tax provided by this section is applicable to any coalbed methane well placed in service before the first day of January, two thousand nine, subject to the provisions of subsection (f) of this section.

(c) Rate and measure of tax. -- The tax imposed on subsection (b) of this section is five percent of the gross value of the coalbed methane produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(d) Tax in addition to other taxes. -- The tax imposed by this section applies to all persons severing coalbed methane in this state, and is in addition to all other taxes imposed by law.

(e) Except as specifically provided in this section, application of the provisions of this article apply to coalbed methane in the same manner and with like effect as the provisions apply to natural gas.

(f) Notwithstanding any other provision of this code to the contrary, on and after the first day of January, two
thousand nine, the exemption from the tax on the privilege of
severing coalbed methane created in this section will no
longer be applicable except that the privilege tax shall not be
collected on coalbed methane produced from any coalbed
methane well for the remainder of the five-year exemption
for any well that was placed in service, including the
commencement of actual drilling of the well, before the first
day of January, two thousand nine.

(g) Subject to the exceptions set forth in this section and
article thirteen-v of this chapter, on and after the first day of
January, two-thousand nine, coalbed methane and methane
produced from or by a coalbed methane well is taxable as
natural gas for purposes of the taxes imposed by this article
and the taxes imposed by article thirteen-v of this chapter.

(h) The Tax Commissioner shall promulgate emergency
and legislative rules, in accordance with the provisions of
article three, chapter twenty-nine-a of this code, as necessary
to effectuate the purposes of this article.

§11-13A-20a. Dedication of tax.

(a) The amount of taxes collected under this article from
providers of health care items or services, including any
interest, additions to tax and penalties collected under article
ten of this chapter, less the amount of allowable refunds and
any interest payable with respect to such refunds, shall be
deposited into the special revenue fund created in the State
Treasurer's Office and known as the Medicaid State Share
Fund. Said fund shall have separate accounting for those
health care providers as set forth in articles four-b and four-c,
chapter nine of this code.

(b) Notwithstanding the provisions of subsection (a) of
this section, for the remainder of fiscal year one thousand
nine hundred ninety-three and for each succeeding fiscal
14 year, no expenditures from taxes collected from providers of
15 health care items or services are authorized except in
16 accordance with appropriations by the Legislature.

17 (c) The amount of taxes on the privilege of severing
timber collected under section three-b of this article,
including any interest, additions to tax and penalties collected
under article ten of this chapter, less the amount of allowable
refunds and any interest payable with respect to such refunds,
shall be paid into a special revenue account in the State
Treasury to be appropriated by the Legislature for purposes
of the Division of Forestry.

25 (d) Notwithstanding any other provision of this code to
the contrary, beginning the first day of January, two thousand
nine, there is hereby dedicated an annual amount not to
exceed four million dollars from annual collections of the tax
imposed by section three-d of this article to be deposited into
the West Virginia Infrastructure Fund, created in section
nine, article fifteen-a, chapter thirty-one of this code.

32 (e) Beginning with the fiscal year ending the thirtieth day
of June, two thousand nine, and each fiscal year thereafter,
the Tax Commissioner shall pay from the taxes imposed in
section three-d of this article, on the first day of October of
each year, into the West Virginia Infrastructure Fund, an
amount not to exceed four million dollars per fiscal year.
Prior to making any such payment the commissioner shall
deduct the amount of refunds lawfully paid and
administrative costs authorized by this code.

41 (f) The Tax Commissioner shall provide to the West
Virginia Infrastructure and Jobs Development Council a
breakdown of coalbed methane taxes paid and amount of
coalbed methane produced by county. The commissioner
may obtain any production or other necessary information not
currently reported to the commissioner from the owners or
operators of coalbed methane wells or from the Department of Environmental Protection or both.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.


(a) Subject to the exceptions set forth in this section, on and after the first day of January, two thousand nine, coalbed methane and methane produced from or by a coalbed methane well is taxable as natural gas for purposes of the taxes imposed by this article. All coalbed methane produced from any coalbed methane well placed in service, including the commencement of actual drilling of the well, before the first day of January, two thousand nine, shall be exempt from the taxes imposed by this article for the remainder of the five-year original exemption period set forth in section three-d, article thirteen-a of this chapter and applicable to the coalbed methane produced from that well.

(b) For purposes of this section, the terms "coalbed methane" and "coalbed methane well" have the meaning ascribed to them in section two, article twenty-one, chapter twenty-two of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.


(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water
supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter: Provided, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) None of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the Division of Forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter.
Notwithstanding any provision of this article to the contrary, the tax on coalbed methane remitted by the Tax Commissioner for deposit in the West Virginia Infrastructure Fund pursuant to section twenty-a, article thirteen-a, chapter eleven of this code shall be distributed as follows: (1) Seventy-five percent of the moneys so deposited shall be distributed for infrastructure projects in the various counties of this state in which the coalbed methane was produced, and (2) the remaining twenty-five percent of the moneys so deposited shall be distributed equally to the various counties of this state in which no coalbed methane was produced for infrastructure projects. Moneys shall be distributed to each coalbed methane producing county in direct proportion to the amount of tax paid by the county using information provided by the Tax Commissioner as required in section twenty-a, article thirteen-a, chapter eleven of this code.

CHAPTER 214

(H.B. 4628 - By Delegates White, Boggs, Kominar and Campbell (By Request))

[Passed March 6, 2008; in effect January 1, 2009.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13Q-22, relating to providing a tax credit for new job creation by certain taxpayers.

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-22, to read as follows:

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.

1 (a) Notwithstanding any provision of this article to the contrary, a taxpayer engaged in one or more of the industries or business activities specified in section nineteen of this article which does not satisfy the new jobs percentage requirement prescribed in subsection (c), section nine, of this article, or if the taxpayer is a small business as defined in section ten of this article, does not create at least ten new jobs within twelve months after placing qualified investment into service as required by section ten of this article, but which otherwise fulfills the requirements prescribed in this article, is permitted to claim a credit against the taxes specified in section seven of this article in the order so specified that are attributable to and the consequence of the taxpayer’s business operations in this state, which result in the creation of net new jobs. Credit under this section is allowed in the amount of three thousand dollars per year, per new job created and filled by a new employee; as those terms are defined in section three of this article for a period of five consecutive years beginning in the tax year when the new employee is first hired. In no case may the number of new employees determined for purposes of this section exceed the total net increase in the taxpayer’s employment in this state. Credit allowed under this section shall be allowed beginning in the tax year when the new employee is first hired: Provided,

26 (1) Pays at least thirty-two thousand dollars annually;
(2) Provides health insurance and may offer benefits including child care, retirement or other benefits; and

(3) Is a full-time, permanent position, as those terms are defined in section three, of this article.

Jobs that pay less than thirty-two thousand dollars annually, or that pay that salary but do not also provide benefits in addition to the salary, do not qualify for the credit authorized by this section. Jobs that are less than full-time, permanent positions do not qualify for the credit authorized by this section.

(b) Unused credit remaining in any tax year after application against the taxes specified in section seven of this article is forfeited and does not carry forward to any succeeding tax year and does not carry back to a prior tax year.

(c) The tax credit authorized by this section may be taken in addition to any credits allowable under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-r or thirteen-s of this chapter.

(d) Reduction in number of employees credit forfeiture—If during the year when a new job was created for which credit was granted under this section or during any of the next succeeding four tax years thereafter, net jobs that are attributable to and the consequence of the taxpayer’s business operations in this state, decrease, counting both new jobs for which credit was granted under this section and preexisting jobs, then the total amount of credit to which the taxpayer is entitled under this section shall be decreased and forfeited in the amount of three thousand dollars for each net job lost.
AN ACT to repeal §11-23-5b of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13S-4 of said code; to amend said code by adding thereto a new article, designated §11-13Y-1, §11-13Y-2, §11-13Y-3, §11-13Y-4, §11-13Y-5, §11-13Y-6, §11-13Y-7, §11-13Y-8 and §11-13Y-9; to amend and reenact §11-23-5a and §11-23-6 of said code; to amend said code by adding thereto a new section, designated §11-23-17b; to amend and reenact §11-24-3a, §11-24-4, §11-24-7, §11-24-7b, §11-24-13a, §11-24-13c, §11-24-13d, §11-24-13f and §11-24-42 of said code; and to amend said code by adding thereto two new sections, designated §11-24-3b and 11-24-9b, all relating to business taxes generally; specifying percentage of taxes subject to offset by manufacturing investment tax credit; creating credit for the value of certain ad valorem taxes paid; requiring report on the application of the credit; providing definitions relating to business franchise tax; providing for eligibility of financial organizations for tax credits; specifying amount of credit allowed; providing for treatment of goodwill associated with certain acquisitions; specifying reductions of business franchise tax rate; defining terms relating to corporate net income tax; specifying general meaning relating to the term “tax haven”; specifying imposition of tax and rates; specifying reductions of corporation net income tax rate and suspension of reductions in certain circumstances; specifying nullity for designated provisions; specifying removal of nullity for
designated provisions; specifying apportionment rules for financial organizations; specifying treatment of insurance companies; specifying method of filing; specifying application of designated net operating losses; specifying treatment of designated dividends; mandating reporting on water’s-edge unitary basis; specifying election to report based on worldwide unitary basis; specifying authority of Tax Commissioner to prescribe reporting basis; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-23-5b of the Code of West Virginia, 1931, as amended, be repealed; that §11-13S-4 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-13Y-1, §11-13Y-2, §11-13Y-3, §11-13Y-4, §11-13Y-5, §11-13Y-6, §11-13Y-7, §11-13Y-8 and §11-13Y-9; that §11-23-5a and §11-23-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-23-17b; that §11-24-3a, §11-24-4, §11-24-7, §11-24-7b, §11-24-13a, §11-24-13c, §11-24-13d, §11-24-13f and §11-24-42 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-24-3b and 11-24-9b, all to read as follows:

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.


(a) Credit allowed. -- There is allowed to eligible taxpayers and to persons described in subdivision (5), subsection (b) of this section a credit against the taxes
imposed by articles thirteen-a, twenty-three and twenty-four of this chapter. The amount of credit shall be determined as hereinafter provided in this section.

(b) Amount of credit allowable. -- The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article) and shall reduce the severance tax, imposed under article thirteen-a of this chapter, the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:

1. The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

2. Severance tax. -- The credit is applied to reduce the severance tax imposed under article thirteen-a of this chapter (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter). The amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: Provided, That for tax years beginning on and after the first day of January, two thousand nine, the amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled
to claim credit under this article and article thirteen-d of this
chapter, the total amount of all credits allowable for the
taxable year may not reduce the amount of the severance tax,
 imposed under article thirteen-a of this chapter, below fifty
percent of the amount which would be imposed for such
taxable year (determined before application of the credit
allowed by section three, article twelve-b of this chapter and
before any other allowable credits against tax and before
application of the annual exemption allowed by section ten,
article thirteen-a of this chapter): Provided, however, That
when in any taxable year beginning on and after the first day
of January, two thousand nine, the taxpayer is entitled to
claim credit under this article and article thirteen-d of this
chapter, the total amount of all credits allowable for the
taxable year may not reduce the amount of the severance tax,
 imposed under article thirteen-a of this chapter, below forty
percent of the amount which would be imposed for such
taxable year as determined before application of the credit
allowed by section three, article twelve-b of this chapter and
before any other allowable credits against tax and before
application of the annual exemption allowed by section ten,
article thirteen-a of this chapter;

(3) *Business franchise tax.* --

After application of subdivision (2) of this subsection,
any unused credit is next applied to reduce the business
franchise tax imposed under article twenty-three of this
chapter (determined after application of the credits against
tax provided in section seventeen, article twenty-three of this
chapter, but before application of any other allowable credits
against tax). The amount of annual credit allowed will not
reduce the business franchise tax, imposed under article
twenty-three of this chapter, below fifty percent of the
amount which would be imposed for such taxable year in the
absence of this credit against tax: Provided, That for tax
years beginning on and after the first day of January, two
thousand nine, the amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax): Provided, however, That when in any taxable year beginning on and after the first day of January, two thousand nine, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax;

(4) *Corporation net income tax.* --

After application of subdivision (3) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under article twenty-four of this chapter (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the
absence of this credit against tax: Provided, That for tax years beginning on and after the first day of January, two thousand nine, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax): Provided, however, That when in any taxable year beginning on and after the first day of January, two thousand nine, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined before application of any other allowable credits against tax;

(5) Pass-through entities. --

(A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.
(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for each taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax): Provided, That for tax years beginning on and after the first day of January, two thousand nine, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for each taxable year in the absence of this credit against the taxes as determined before application of any other allowable credits against tax.

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below fifty percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax): Provided, That when in any taxable year beginning on and after the first day of January, two thousand nine, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below forty percent of the amount that would be imposed for such taxable year on the conduit income as determined before application of any other allowable credits against tax;
178 (6) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit after application of subdivisions (2), (3) and (4) of this subsection among their members in the same manner as profits and losses are allocated for the taxable year; and

184 (7) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.

186 (c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

190 (d) Application for credit required. --

191 (1) Application required. -- Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the Tax Commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use.

208 (2) Failure to file. -- The failure to timely apply the application for credit under this section results in forfeiture
of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.

ARTICLE 13Y. THE WEST VIRGINIA MANUFACTURING PROPERTY TAX ADJUSTMENT ACT.

§11-13Y-3. Eligibility for tax credits; creation of the credit.
§11-13Y-4. Amount of credit allowed.
§11-13Y-5. Application of annual credit allowance.
§11-13Y-6. Availability of credit to successors.
§11-13Y-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.


1 This article shall be known and cited as the West Virginia Manufacturing Property Tax Adjustment Act.


1 (a) General. -- When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used.

6 (b) Terms defined. --

7 (1) “Affiliate” means and includes all persons, as defined in this section, which are affiliates of each other when either directly or indirectly:

10 (A) One person controls or has the power to control the other, or
A third party or third parties control or have the power to control two persons, the two thus being affiliates. In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(2) “Commissioner” or “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or the Tax Commissioner’s delegate.

(3) “Corporation” means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(4) “Delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the Tax Division of the Department of Revenue 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.

(5) “Eligible taxpayer” means any manufacturing business that is subject to the tax imposed under article twenty-three or twenty-four of this chapter, or both: Provided, That taxpayers owning property assessed by the Board of Public Works are not eligible taxpayers for purposes of this article. “Eligible taxpayer” also means and includes those members of an affiliated group of taxpayers engaged in a unitary business, in which one or more members of the affiliated group is a person subject to the tax imposed under article twenty-three or article twenty-four of this chapter, or both. Affiliates not engaged in the unitary business do not qualify as eligible taxpayers.
(6) “Manufacturing business” means any business primarily engaged in business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number, of thirty-one, thirty-two or thirty-three that also paid ad valorem property tax on manufacturing inventory to one or more West Virginia counties during the taxable year.

(7) “Manufacturing inventory” means and is limited to raw materials, goods in process and finished goods of a business primarily engaged in business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number, of thirty-one, thirty-two or thirty-three.

(8) “Natural person” or “individual” means a human being.

(9) “Partnership” and “partner” means and 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. The term “partner” includes a member in a syndicate, group, pool, joint venture or organization.

(10) “Person” means and includes any natural person, corporation, limited liability company or partnership.

(11) “Related entity”, “related person”, “entity related to” or “person related to” means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;
(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, “control”, with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. “Control”, with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the United States Internal Revenue Code, as amended: Provided, That paragraph (3), Section 267(c) of the United States Internal Revenue Code shall not apply.

(12) “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax purposes.

(13) “Taxpayer” means any person subject to the tax imposed under article twenty-three or twenty-four of this chapter, or both.

(14) “Unitary business” means a unitary business as defined in section three-a, article twenty-four of this chapter.
§11-13Y-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the taxes imposed under articles twenty-three and twenty-four of this chapter, as determined under this article.

§11-13Y-4. Amount of credit allowed.

(a) Credit allowed. -- Eligible taxpayers shall be allowed a credit against the tax imposed under article twenty-three or twenty-four of this chapter, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. -- The amount of credit allowed to the eligible taxpayer is the amount of West Virginia ad valorem property tax paid on the value of manufacturing inventory of the eligible taxpayer during the corporate net income tax year and business franchise tax year.

§11-13Y-5. Application of annual credit allowance.

(a) Application of credit against business franchise tax. -- The amount of credit allowed shall first be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by article twenty-three of this chapter.

(b) Application of credit against corporate net income tax. -- Any credit remaining after application of the credit against the tax liabilities of the eligible taxpayer for the current taxable year imposed by article twenty-three of this chapter shall next be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by article twenty-four of this chapter.

(c) Carryover credit disallowed. -- Any credit remaining after application of the credit against the tax liabilities
specified in subsections (a) and (b) of this section for the
current taxable year is forfeited and shall not carry back to
any prior taxable year and shall not carry forward to any
subsequent taxable year. The credit allowed under this article
shall be applied after application of all other applicable tax
credits allowed for the taxable year against the taxes imposed
by article twenty-three of this chapter and after application of
all other applicable tax credits allowed for the taxable year
against the taxes imposed by article twenty-four of this
chapter.

(d) Annual schedule. -- For purposes of asserting the
credit against tax, the taxpayer shall prepare and file an
annual schedule showing the amount of tax paid for the
taxable year and the amount of credit allowed under this
article. The annual schedule shall set forth the information
and be in the form prescribed by the Tax Commissioner.

§11-13Y-6. Availability of credit to successors.

(a) Transfer or sale of assets. --

(1) Where there has been a transfer or sale of the business
assets of an eligible taxpayer to a successor which subsequent
to the transfer constitutes an eligible taxpayer as defined in
this article, which continues to operate the manufacturing
business in this state, and which remains subject to the taxes
prescribed under article twenty-three or twenty-four of this
chapter, or both, the successor eligible taxpayer is entitled to
the credit allowed under this article: Provided, That the
successor taxpayer otherwise remains in compliance with the
requirements of this article for entitlement to the credit.

(2) For any taxable year during which a transfer, or sale
of the business assets of an eligible taxpayer to a successor
eligible taxpayer under this section occurs, or a merger
occurs pursuant to which credit is allowed under this article,
the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each taxpayer based and the number of days during the taxable year that each taxpayer owned the business assets transferred.

(b) Stock purchases. -- Where a corporation which is an eligible taxpayer entitled to the credit allowed under this article is purchased through a stock purchase by a new owner and remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the credit allowed under this article will not be affected by the ownership change: Provided, That the corporation otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(c) Mergers. --

(1) Where a corporation or other entity which is an eligible taxpayer entitled to the credit allowed under this article is merged with another corporation or entity, the surviving corporation or entity shall be entitled to the credit to which the predecessor eligible taxpayer was originally entitled: Provided, That the surviving corporation or entity otherwise complies with the provisions of this article.

(2) The amount of credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each owned the transferred business assets.

(d) No provision of this section or of this article shall be construed to allow sales or other transfers of the tax credit allowed under this article. The credit allowed under this article can be transferred only in circumstances where there is a valid successorship as described under this section.
§11-13Y-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person or entity has taken the credit against tax allowed under this article and was not entitled to take the credit, then the credit improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in section seventeen, article ten of this chapter and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(b) Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter may be waived at the discretion of the Tax Commissioner: Provided, That interest is not subject to waiver.

(c) Notwithstanding the provisions of article ten of this chapter, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner shall be five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.


(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by the first day of July, two thousand eleven, and on the first day of July of each year thereafter, a report detailing the amount of credit claimed pursuant to this article. The report is to include the
amount of credit claimed against the business franchise tax and the amount of credit claimed against the corporate net income tax.

(b) Taxpayers claiming the credit shall provide the information as the Tax Commissioner may require to prepare the report: Provided, That the information is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.


This article shall be effective for corporate net income tax years and business franchise tax years beginning on or after the first day of January, two thousand nine.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-5a. Special apportionment rules - financial organizations.

(a) General. -- The Legislature hereby finds that the general formula set forth in section five of this article for apportioning the tax base of corporations and partnerships taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section five of this article may not be used to apportion the tax base of financial organizations which shall use only the apportionment formula and methods set forth in this section.

(b) West Virginia financial organizations taxable in another state. -- A financial organization that has its
commercial domicile in this state and which is taxable in another state may not apportion its tax base as provided in section five of this article, but shall apportion its tax base to this state by multiplying it by the special gross receipts factor calculated as provided in subsection (f) of this section. The product of this multiplication is the portion of its tax base that is attributable to business activity in this state.

(c) Out-of-state financial organizations with business activities in this state. -- A financial organization that does not have its commercial domicile in this state and which regularly engages in business in this state shall apportion its tax base to this state by multiplying it by the special gross receipts factor calculated as provided in subsection (f) of this section. The product of this multiplication is the portion of its tax base that is attributable to business activity in this state.

(d) Engaging in business -- nexus presumptions and exclusions. -- A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars. However, gross receipts from the following types of property, as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property or the acquisition or liquidation of collateral relating to the property shall not be a factor in determining whether the owner is engaging in business in this state:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust or a regulated investment company;
(2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; or

(5) Any amounts held in an escrow or trust account with respect to property described above.

e) Definitions. -- For purposes of this section:

(1) "Commercial domicile" means the same as that term is defined in section three of this article.

(2) "Deposit" means: (A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a
traveler's check on which the financial organization is
primarily liable: Provided, That without limiting the
generality of the term "money or its equivalent", any account
or instrument must be regarded as evidencing the receipt of
the equivalent of money when credited or issued in exchange
for checks or drafts or for a promissory note upon which the
person obtaining any credit or instrument is primarily or
secondarily liable or for a charge against a deposit account or
in settlement of checks, drafts or other instruments forwarded
to the bank for collection;

(B) Trust funds received or held by a financial
organization, whether held in the trust department or held or
deposited in any other department of the financial
organization;

(C) Money received or held by a financial organization
or the credit given for money or its equivalent received or
held by a financial organization in the usual course of
business for a special or specific purpose, regardless of the
legal relationship thereby established, including, without
being limited to, escrow funds, funds held as security for an
obligation due the financial organization or other, including
funds held as dealers' reserves, or for securities loaned by the
financial organization, funds deposited by a debtor to meet
maturing obligations, funds deposited as advance payment on
subscriptions to United States government securities, funds
held for distribution or purchase of securities, funds held to
meet its acceptances or letters of credit and withheld taxes:
Provided, That there shall not be included funds which are
received by the financial organization for immediate
application to the reduction of an indebtedness to the
receiving financial organization or under condition that the
receipt thereof immediately reduces or extinguishes an
indebtedness;

(D) Outstanding drafts, including advice or authorization
to charge a financial organization's balance in another
organization, cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if the entity is engaged in soliciting and holding balances in the regular course of its business.

(3) "Financial organization" means a financial organization as defined in subdivision (13), subsection (b), section three of this article, as well as a partnership which derives more than fifty percent of its gross business income from one or more of the activities enumerated in subparagraphs (1) through (6), inclusive, paragraph (C) of said subdivision.

(4) "Sales" means: For purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (f) of this section, regardless of their source.

(f) Special gross receipts factor. -- The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six, article twenty-four of this chapter.

(1) Numerator. -- The numerator of the gross receipts factor shall include, in addition to items otherwise includable
in the sales factor under section five of this article, the following:

(A) Gross receipts from the lease or rental of real or tangible personal property, whether as the economic equivalent of an extension of credit or otherwise if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if the security property is located in the state. In the event that the security property is also located in one or more other states, receipts shall be presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: Provided, That receipts are presumed to be from sources in this state and the presumption may be overcome by reference to factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(E) Interest income and other receipts from a financial organization's syndication and participation in loans, under
the rules set forth in paragraphs (A) through (D), inclusive, of this subdivision;

(F) Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this state or if the billings for any receipts are regularly sent to an address in this state;

(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. In the case of merchants located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer's election, receipts from loan-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either:
(I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death or the grantor who either funded or established the trust is a resident of this state; or

(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of service is received in this state;

(I) Gross receipts from the issuance of travelers' checks and money orders if checks and money orders are purchased in this state; and

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

(2) Denominator. -- The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(g) Limited tax credit for certain financial organizations for certain periods. -- A credit shall be allowed against the tax imposed by this article on a financial organization with its
commercial domicile in this state that acquires a financial organization that does not have its commercial domicile in this state: Provided, That the goodwill associated with the acquisition is first added to the net equity of the financial organization with its commercial domicile in this state on or after the first day of January two thousand eight: Provided, however, That the prior recordation of the goodwill associated with the acquisition on the balance sheet of a financial organization that does not have its commercial domicile in this state shall not affect, limit or reduce the availability of the credit authorized by this subsection. The credit shall equal fifty percent of the goodwill associated with the acquisition in the amount first recorded on the balance sheet of the financial organization with its commercial domicile in this state, multiplied by the tax rate applicable to the financial organization under this article for the taxable year. For purposes of this subsection, the term “goodwill” shall have the meaning set forth in the capital adequacy guidelines for bank holding companies established by the Federal Reserve Board in 12 C. F. R. 225, Appendix A, as the same may be revised from time to time.

(h) Effective date. -- The provisions of this section enacted in chapter one hundred sixty-seven, Acts of the Legislature, one thousand nine hundred ninety-one, shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one. The amendments to this section, enacted in the year one thousand nine hundred ninety-six, shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five. The amendments to this section, enacted in the year two thousand eight, shall apply to taxable years beginning after the thirty-first day of December, two thousand eight: Provided, That the amendments to subsection (g) of this section, enacted in the year two thousand eight, shall apply to taxable years beginning after the thirty-first day of December, two thousand seven.
§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 twelve. -- 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.

(10) Taxable years after the thirty-first day of December, two thousand thirteen. -- For taxable years beginning on or after the first day of January, two thousand fourteen, the amount of tax due under this article shall be the greater of fifty dollars or ten one hundredths of one percent of the value of the tax base as determined under this article.

(11) Taxable years after the thirty-first day of December, two thousand fourteen. -- For taxable years beginning on or after the first day of January, two thousand fifteen, there shall be no tax due under the provisions of 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.

§11-23-17b. Application of tax credits.

Except where otherwise provided, no tax credit earned by one member of the combined 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 tax of another member of the combined group; and a tax credit carried over into a subsequent year as to the member that incurred it, and available as a credit to that member in a subsequent year, will be considered in the computation of the capital of that member in the subsequent year regardless of the composition of that capital as apportioned, allocated or wholly within this state: Provided, That unused and unexpired economic development tax credits that were earned during a tax year in which the taxpayer filed a consolidated return under this article may, if otherwise allowed within the statutory limitations applicable to the tax credit, be used, in whole or in part, or applied, in whole or in part, against the taxes imposed by this article on any member of the taxpayer’s combined group to the extent the credits would have been allowed had the taxpayer continued to file a consolidated return. For purposes of this section the term economic development tax credit means and is limited to a tax credit asserted on a tax return under article thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-q, thirteen-r or thirteen-s of this chapter or under article one, chapter five-e of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.
§11-24-3b. General meaning of definition of the term tax haven for specified jurisdictions.
§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.
§11-24-7b. Special apportionment rules - financial organizations.
§11-24-9b. Limited tax credits - Financial organizations.
§11-24-13c. Determination of taxable income or loss using combined report.
§11-24-13d. Determination of the business income of the combined group.
§11-24-13f. Water’s-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.
§11-24-42. Effective date.
*§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 thirteen-a of this article in determining the taxpayer’s share of the net business income or loss apportionable to this state.

(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

*CLERK’S NOTE:* This section was also amended by HB 4420 (Chapter 222), which passed subsequent to this act.
business in this state would be subject to the tax imposed by
this article. 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
or her 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.

(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.

(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.

(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
(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.

(11) **Financial organization.** -- The term “financial organization” means:

(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 1956 or registered as a savings and loan holding company other than a diversified savings and loan holding company as defined in Section 408(a)(1)(F) of the federal National Housing Act, 12 U. S. C. §1730(a)(1)(F);

(B) A regulated financial corporation or a subsidiary thereof. As used in this section “regulated financial corporation” means:

(i) An institution, the deposits, shares or accounts of which are insured under the Federal Deposit Insurance Act or by the federal Savings and Loan Insurance Corporation;

(ii) An institution that is a member of a federal home loan bank;

(iii) Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

(iv) A credit union incorporated and organized under the laws of this state;

(v) A production credit association organized under 12 U. S. C. §2071;
(vi) A corporation organized under 12 U. S. C. §611 through §631 (an Edge Act corporation); or

(vii) A federal or state agency or branch of a foreign bank as defined in 12 U. S. C. §3101; or

(C) A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:

(i) 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.

(ii) 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 CFR 225.25(b)(5).

(iii) Operating a credit card business.

(iv) Rendering estate or trust services.

(v) Receiving, maintaining or otherwise handling deposits.
(vi) Engaging in any other activity with an economic effect comparable to those activities described in subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph.

(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, do not exclude other things otherwise within the meaning of the term being defined.

(14) Insurance company. -- The term “insurance company” means any corporation subject to taxation under section twenty-two, article three, chapter twenty-nine of this code or chapter thirty-three of this code or an insurance carrier subject to the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code or any corporation that would be subject to taxation under any of those provisions were its business transacted in this state.

(15) "Internal Revenue Code" means the Internal Revenue Code as defined in section three of this article, without regard to application of federal treaties unless expressly made applicable to states of the United States.

(16) Nonbusiness income. -- The term “nonbusiness income” means all income other than business income.

(17) “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.

(18) Person. -- The term “person” is considered 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.

(19) Pro forma return. -- The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an affiliated group.

(20) Public utility. -- The term “public utility” means any business activity to which the jurisdiction of the Public Service Commission of West Virginia extends under section one, article two, chapter twenty-four of this code.

(21) Sales. -- The term “sales” means all gross receipts of the taxpayer that are “business income” as defined in this section.

(22) State. -- The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof.

(23) Taxable year, tax year. -- The term “taxable year” or “tax year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(24) Tax. -- The term “tax” includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.
(25) **Tax Commissioner.** -- The term "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(26) "Tax haven" means a jurisdiction that, for a particular tax year in question: (A) Is identified by the Organization for Economic Cooperation and Development as 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 benefitting from, the tax regime; (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.

(27) **Taxpayer.** -- The term “taxpayer” means any person subject to the tax imposed by this article.
(28) This code. -- The term “this code” means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

(29) This state. -- The term “this state” means the State of West Virginia.

(30) “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.

(31) “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. For purposes of this article and article twenty-three of this chapter, any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or the percentage of its distributive or any other share of partnership income. A business conducted directly or indirectly by one corporation through its direct or indirect interest in a partnership is unitary with that portion of a business conducted by one or more other corporations through their direct or indirect interest in a partnership if there is 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 and the corporations are members of the same commonly controlled group.

(32) 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 the portion of its taxable income as defined and adjusted as is allocated or apportioned to this state under the provisions of this article.

§11-24-3b. General meaning of definition of the term tax haven for specified jurisdictions.

(a) General. -- For purposes of this article and article twenty-three of this chapter, a jurisdiction that, for a particular tax year in question is identified by the Organization for Economic Cooperation and Development as a tax haven or as having a harmful preferential tax regime means and includes any and all jurisdictions so identified as of the most recent list or compilation of jurisdictions issued, published or adopted by the Organization for Economic Cooperation and Development on or before the effective date of this section.

(b) Effective date. -- This section as enacted in the year two thousand eight shall be effective on passage.

§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.

Primary tax. -- (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.

(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.

(5) In the case of taxable periods beginning on or after the first day of January, two thousand nine, 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 one-half percent.

(6) In the case of taxable periods beginning on or after the first day of January, two thousand twelve, 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 seven and three-quarters percent: Provided, That the reduction in tax authorized by this subsection shall be suspended if the combined balance of funds as of the thirtieth day of June, two thousand eleven, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the general revenue fund budgeted for the fiscal year commencing the first day of July, two thousand eleven: Provided, however, That the rate reduction schedule will resume in the calendar year immediately following any subsequent fiscal year when the combined balance of funds as of the thirtieth day of June
of that fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B next equals or exceeds ten percent of the general revenue fund budgeted for the immediately succeeding fiscal year.

(7) In the case of taxable periods beginning on or after the first day of January, two thousand thirteen, 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 seven percent: Provided, That the reduction in tax authorized by this subsection shall be suspended for one calendar year subsequent to the occurrence of the suspension of the reduction in tax authorized by subdivision (6) of this section: Provided, however, That the reduction in tax on the first day of any calendar year authorized by this subsection shall be suspended if the combined balance of funds as of the thirtieth day of June of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the general revenue fund budgeted for the fiscal year commencing the first day of July of the preceding year.

(8) In the case of taxable periods beginning on or after the first day of January, two thousand fourteen, 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 six and one-half percent: Provided, That the reduction in tax authorized by this subsection shall be suspended for one calendar year subsequent to the occurrence of the
suspension of the reduction in tax authorized by subdivision
(7) of this section: Provided, however, That the reduction in
tax on the first day of any calendar year authorized by this
subsection shall be suspended if the combined balance of
funds as of the thirtieth day of June of the preceding year in
the Revenue Fund Shortfall Reserve Fund and the Revenue
Fund Shortfall Reserve Fund - Part B established in section
twenty, article two, chapter eleven-b of this code does not
equal or exceed ten percent of the general revenue fund
budgeted for the fiscal year commencing the first day of July
of the preceding year.


(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 on or after the first day of January, two thousand
nine, the income from the business activities of a financial
organization that are taxable in another 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.

(C) This subdivision shall be null and void and of no force or effect for tax years beginning on or after the first day of January, two thousand nine.

(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
(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 schedule of wages and salaries and that portion of cost of goods sold which reflects compensation or as shown on a pro forma return.

(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 detail and proof as the Tax Commissioner requires.

(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 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 in subdivision (1) or (2) of this subsection is sought, on the grounds 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.

§11-24-7b. Special apportionment rules - financial organizations.

(a) General. — The Legislature hereby finds that the general formula set forth in section seven of this article for apportioning the business income of corporations taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section seven of this article may not be used to apportion the business income of financial organizations, which shall use only the apportionment formula and methods set forth in this section.

(b) West Virginia financial organizations taxable in another state. -- The West Virginia taxable income of a financial organization that has its commercial domicile in this state and which is taxable in another state shall be the sum of:

(1) The nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided in subsection (d), section seven of this article; plus (2) the business income component of its adjusted federal taxable income for the taxable year which is apportioned to this state as provided in this section.

(c) Out-of-state financial organizations with business activities in this state. -- The West Virginia taxable income
of a financial organization that does not have its commercial
domicile in this state but which regularly engages in business
in this state shall be the sum of: (1) The nonbusiness income
component of its adjusted federal taxable income for the
taxable year which is allocated to this state as provided in
subsection (d), section seven of this article; plus (2) the
business income component of its adjusted federal taxable
income for the taxable year which is apportioned to this state
as provided in this section.

(d) Engaging in business - nexus presumptions and
exclusions. -- A financial organization that has its
commercial domicile in another state is presumed to be
regularly engaging in business in this state if during any year
it obtains or solicits business with twenty or more persons
within this state, or if the sum of the value of its gross
receipts attributable to sources in this state equals or exceeds
one hundred thousand dollars. However, gross receipts from
the following types of property, as well as those contacts with
this state reasonably and exclusively required to evaluate and
complete the acquisition or disposition of the property, the
servicing of the property or the income from it, the collection
of income from the property or the acquisition or liquidation
of collateral relating to the property shall not be a factor in
determining whether the owner is engaging in business in this
state:

(1) An interest in a real estate mortgage investment
conduit, a real estate investment trust or a regulated
investment company;

(2) An interest in a loan backed security representing
ownership or participation in a pool of promissory notes or
certificates of interest that provide for payments in relation to
payments or reasonable projections of payments on the notes
or certificates;
(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; or

(5) Any amounts held in an escrow or trust account with respect to property described above.

(e) Definitions. — For purposes of this section:

(1) "Commercial domicile" has same meaning as that term is defined in section three-a of this article.

(2) "Deposit" means:

(A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable: Provided, That without limiting the generality of the term "money or its equivalent", any account
or instrument must be regarded as evidencing the receipt of
the equivalent of money when credited or issued in exchange
for checks or drafts or for a promissory note upon which the
person obtaining any credit or instrument is primarily or
secondarily liable or for a charge against a deposit account or
in settlement of checks, drafts or other instruments forwarded
to the bank for collection;

(B) Trust funds received or held by the financial
organization, whether held in the trust department or held or
deposited in any other department of the financial
organization;

(C) Money received or held by a financial organization
or the credit given for money or its equivalent received or
held by a financial organization in the usual course of
business for a special or specific purpose, regardless of the
legal relationship thereby established, including, without
being limited to, escrow funds, funds held as security for an
obligation due the financial organization or other, including
funds held as dealers' reserves or for securities loaned by the
financial organization, funds deposited by a debtor to meet
maturing obligations, funds deposited as advance payment on
subscriptions to United States government securities, funds
held for distribution or purchase of securities, funds held to
meet its acceptances or letters of credit, and withheld taxes:

Provided, That there shall not be included funds which are
received by the financial organization for immediate
application to the reduction of an indebtedness to the
receiving financial organization, or under condition that the
receipt thereof immediately reduces or extinguishes an
indebtedness;

(D) Outstanding drafts, including advice or authorization
to charge a financial organization's balance in another
organization, cashier's checks, money orders or other officer's
checks issued in the usual course of business for any purpose,
but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if the entity is engaged in soliciting and holding balances in the regular course of its business.

(3) "Financial organization" has the same meaning as that term is defined in section three-a of this article.

(4) "Sales" means, for purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (g) of this section, regardless of their source.

(f) Apportionment rules. — A financial organization which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in section six of this article, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (g) of this section.

(g) Special gross receipts factor. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six of this article.

(1) Numerator. — The numerator of the gross receipts factor shall include, in addition to items otherwise includable
in the sales factor under section seven of this article, the
following:

(A) Receipts from the lease or rental of real or tangible
personal property whether as the economic equivalent of an
extension of credit or otherwise if the property is located in
this state;

(B) Interest income and other receipts from assets in the
nature of loans which are secured primarily by real estate or
tangible personal property if the security property is located
in the state. In the event that the security property is also
located in one or more other states, receipts shall be
presumed to be from sources within this state, subject to
rebuttal based upon factors described in rules to be proposed
by the Tax Commissioner, including the factor that the
proceeds of any loans were applied and used by the borrower
entirely outside of this state;

(C) Interest income and other receipts from consumer
loans which are unsecured or are secured by intangible
property that are made to residents of this state, whether at a
place of business, by traveling loan officer, by mail, by
telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commercial
loans and installment obligations which are unsecured or are
secured by intangible property if and to the extent that the
borrower or debtor is a resident of or is domiciled in this
state: Provided, That receipts are presumed to be from
sources in this state and the presumption may be overcome
by reference to factors described in rules to be proposed by
the Tax Commissioner, including the factor that the proceeds
of any loans were applied and used by the borrower entirely
outside of this state;

(E) Interest income and other receipts from a financial
organization's syndication and participation in loans, under
the rules set forth in paragraphs (A) through (D), inclusive, of this subdivision;

(F) Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this state or if the billings for any receipts are regularly sent to an address in this state;

(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. In the case of merchants located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer's election, receipts from loan-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either:
"Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death or the grantor who either funded or established the trust is a resident of this state; or

(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of service is received in this state;

(I) Gross receipts from the issuance of travelers' checks and money orders if the checks and money orders are purchased in this state; and

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

(2) Denominator. — The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(h) Effective date. — The provisions of this section enacted as chapter one hundred sixty-seven, Acts of the Legislature, one thousand nine hundred ninety-one, shall
apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one. Amendments to this section enacted in the year one thousand nine hundred ninety-six shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five. The amendments to this section, enacted in the year two thousand eight, shall apply to taxable years beginning after the thirty-first day of December, two thousand eight.

§11-24-9b. Limited tax credits - Financial organizations.

1 (a) Definitions. --

2 For purposes of this section:

3 (1) “Adjusted base year tax liability” means the taxpayer’s corporation net income tax liability under this article, for the tax year ending immediately on or before the thirty-first day of December, two thousand eight, before application of any surtax, alternative minimum tax or credit allowed, authorized or imposed under this chapter, adjusted by:

10 (A) Adding the base year liabilities, if any, of affiliates, subsidiaries and related entities that are included in the taxpayer’s current year combined report, but which were not included in the taxpayer’s base year filing configuration, and

14 (B) Subtracting the base year liabilities, if any, of affiliates, subsidiaries and related entities that were included in the taxpayer’s base year filing configuration, but that are not included in the taxpayer’s current year combined report.

18 (2) “Adjusted primary tax liability” means the current year’s liability of the taxpayer under this article before application of any surtax, alternative minimum tax or credit
allowed, authorized or imposed under this chapter for the current tax year:

(3) “Financial organization” means a financial organization as defined in section three-a of this article.

(b) *Credit authorized.* -- A credit shall be allowed against the adjusted primary tax liability of every financial organization under this article, in an amount equal to a portion of the increase in the adjusted primary tax liability of the financial organization under this article for the taxable year, over the amount of the adjusted primary tax liability of the financial organization under this article for the taxable year beginning immediately on or after the first day of January, two thousand eight. The portion of the increase in the adjusted primary tax liability under this article that shall be allowed as a credit under this section is eighty percent for taxable years beginning on and after the first day of January, two thousand nine; sixty percent for taxable years beginning on and after the first day of January, two thousand ten; forty percent for taxable years beginning on and after the first day of January, two thousand eleven; twenty percent for taxable years beginning on and after the first day of January, two thousand twelve; ten percent for taxable years beginning on and after the first day of January, two thousand thirteen; and zero percent for taxable years beginning on and after the first day of January, two thousand fourteen; *Provided,* That the credit allowed by this section may not be used to reduce the adjusted primary tax liability of any financial organization under this article in any taxable year below one million dollars.


(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 the return and consent to the filing of the return. The filing of a consolidated return is considered 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 the 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, the 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
35 consolidated return when that affiliated group complies with all of the following rules:

37 (1) The affiliated group of which the financial organization is a member must file a federal consolidated income tax return for the taxable year.

40 (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 consent.

45 (3) The West Virginia taxable income of the affiliated group shall be the sum of:

47 (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 the financial organizations; plus

52 (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 the financial organizations; plus

57 (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 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 in this article. When a different
special industry apportionment rule applies, the West
Virginia taxable income of a member subject to that special
industry apportionment rule is determined on a separate pro-
forma West Virginia return for the member subject to that
special industry rule and the West Virginia taxable income
determined shall be included in the consolidated return.

(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.

(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.

(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.

(d) Combined return. --

(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 tax years 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. --

Notwithstanding the provisions of section nine-a, article twenty-three of this chapter or any other provision of this code to the contrary, the taxpayer shall file on the same basis under article twenty-three of this chapter as the taxpayer files under this article for the taxable year.

(f) Regulations. --

The Tax Commissioner shall prescribe regulations as he or she considers 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 a manner as the Tax Commissioner considers necessary to clearly reflect the income tax liability and the income factors necessary for the determination of liability and in order to prevent avoidance of 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 the 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 that 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, and notwithstanding the provisions of section nine-a, article twenty-three of this chapter or any other provision of this code to the contrary except the last sentence of this subsection, 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 other information as required by the Tax Commissioner. Notwithstanding any provision to the contrary in this article, the income of an insurance company, the allocation or apportionment of income related thereto and the apportionment factors of an insurance company shall not be included in a combined report filed under this article unless specifically required to be included 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.

(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 the
taxpayer, the Tax Commissioner may, on a case-by-case
basis, require all or any part of the income and associated
apportionment factors 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
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
(G) Its net operating loss carryover. If the taxable income computed pursuant to this section and section thirteen-d of this article results in a loss for a taxpayer member of the combined group, that taxpayer member has a West Virginia net operating loss, subject to the net operating loss limitations, and carryover provisions of this article. This West Virginia net operating loss is applied as a deduction in a prior or subsequent year only if that taxpayer has West Virginia source positive net income, whether or not the taxpayer is or was a member of a combined reporting group in the prior or subsequent year: Provided, That net operating loss carryovers that were earned during a tax year in which the taxpayer filed a consolidated return under this article may be applied as a deduction from the West Virginia taxable income of any member of the taxpayer’s controlled group until the net operating loss carryover is used or expires pursuant to the net operating loss provisions of this article.

(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: Provided, That unused and unexpired economic development tax credits that were earned during a tax year in which the taxpayer filed a consolidated return under this article may, if otherwise allowed within the statutory limitations applicable to the tax credit, be used, in whole or in part, against taxes imposed by this article on any member of the taxpayer’s combined group to the extent the credits would have been allowed had the
taxpayer continued to file a consolidated return. For purposes of this section, the term “economic development tax credit” means, and is limited to, a tax credit asserted on a tax return under article thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-q, thirteen-r or thirteen-s of this chapter or under article one, chapter five-e of this code.

(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, including in the property, payroll and sales factor numerators the taxpayer’s property, payroll and sales, respectively, 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.
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 States or foreign, shall be translated into the currency in which the parent company maintains its books and records.

(E) Income apportioned to this state shall be expressed in United States dollars.

(3) In lieu of the procedures set forth in subdivision (2) of this subsection, and subject to the determination of the Tax 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.

(c) If a unitary business includes income from a partnership, the income to be included in the total income of the combined group shall be the member of the combined
(d) All dividends paid by one to another of the members of the combined group shall, to the extent those dividends are 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. Except as otherwise provided, this provision shall not apply to dividends received from members of the unitary business which are not a part of the combined group. Except when specifically required by the Tax Commissioner to be included, all dividends paid by an insurance company directly or indirectly to a corporation that is part of a unitary business with the insurance company shall be deducted or eliminated from the income of the recipient of the dividend.

(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 C. F. R. 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 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.

§11-24-13f. Water’s-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.
(a) Water's-edge reporting. --

Absent an election under subsection (b) of this section to report based upon a worldwide unitary combined reporting basis, taxpayer members of a unitary group shall determine each of their apportioned shares of the net business income or loss of the combined group on a water’s-edge unitary combined reporting basis. In determining tax under this article and article twenty-three of this chapter on a water’s-edge unitary combined reporting basis, taxpayer members shall take into account all or a portion of the income and apportionment factors of only the following members otherwise included in the combined group pursuant to section thirteen-a of this article:

(1) The entire income and apportionment factors of any member incorporated in the United States or formed under the laws of any state, the District of Columbia or any territory or possession of the United States;

(2) The entire income and apportionment factors of any 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 its business income which is effectively connected, or treated as effectively connected under the provisions of the Internal Revenue Code, with the
conduct of a trade or business within the United States and, for that reason, subject to federal income tax;

(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 business income of other members of the water's-edge group, to the extent of that income and the apportionment factors related thereto; and

(7) The entire income and apportionment factors of any member that is doing business in a tax haven 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 to report based on worldwide unitary combined reporting. --
(1) An election to report West Virginia tax based on worldwide unitary combined reporting 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 worldwide unitary combined reporting 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) The 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 worldwide unitary combined reporting 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 or excluded from 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.

(4) In the discretion of the Tax Commissioner, the Tax Commissioner may mandate worldwide unitary combined reporting, in part or in whole, and the income and apportionment factors of any member of the taxpayer’s unitary group may be included in or excluded from 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.

(5) A worldwide unitary combined reporting 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 reinstituted 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 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 worldwide unitary combined reporting election. 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 worldwide unitary combined reporting election shall be in place for an additional ten-year period, subject to the same conditions as applied to the original election.

(c) For purposes of determining the tax imposed by article twenty-three of this chapter, the term “income”, as used in this section, shall be interpreted to mean the tax base or capital, as applicable, for purposes of the tax imposed under article twenty-three of this chapter.

§11-24-42. Effective date.

The provisions of this article as amended or added by this act enacted in the year two thousand eight shall apply to all taxable years beginning after the thirty-first day of December, two thousand eight: Provided, That if an effective date is expressly provided in any provision, that specific effective date shall control in lieu of this general effective date provision.
AN ACT to amend and reenact §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2 and §24-6-6b of said code, all relating to taxation of prepaid wireless calling service and the wireless enhanced 911 fee; defining “prepaid wireless calling service”; providing that prepaid wireless calling service is subject to the consumers sales and service tax; requiring the collection and deposit by the Tax Commissioner of the proceeds of the consumers sales and service tax imposed on the sale of prepaid wireless calling service into the wireless enhanced 911 fee accounts maintained and administered by the Public Service Commission; and providing that prepaid wireless calling service is no longer subject to the wireless enhanced 911 fee.

Be it enacted by the Legislature of West Virginia:

That §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-6-2 and §24-6-6b of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

1 (a) General. -- When used in this article and article fifteen-a of this chapter, words defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. --

(1) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) “Communication” means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and includes commercial broadcast radio, commercial broadcast television and cable television.

(3) “Contracting”:

(A) In general. -- “Contracting” means and includes the furnishing of work, or both materials and work, for another
(by a sole contractor, general contractor, prime contractor, subcontractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. Contracting also includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(B) Form of contract not controlling. -- An activity that falls within the scope of the definition of contracting constitutes contracting regardless of whether the contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(C) Special rules. -- For purposes of this definition:

(i) The term “structure” includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property or which adds utility to real property or any part thereof or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time;

(ii) The term “alteration” means, and is limited to, alterations which are capital improvements to a building or structure or to real property;

(iii) The term “repair” means, and is limited to, repairs which are capital improvements to a building or structure or to real property;
(iv) The term “decoration” means, and is limited to, decorations which are capital improvements to a building or structure or to real property;

(v) The term “improvement” means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(vi) The term “capital improvement” means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property, or any part thereof, and that last or are intended to be relatively permanent. As used herein, “relatively permanent” means lasting at least a year in duration without the necessity for regularly scheduled recurring service to maintain the capital improvement. “Regular recurring service” means regularly scheduled service intervals of less than one year;

(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of tangible personal property from the service provider's inventory: Provided, That the hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing
are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or intends to allow the real property or thing permanently attached thereto to remain in service for a year or longer; and

(viii) The term “construction manager” means a person who enters into an agreement to employ, direct, coordinate or manage design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a “construction manager” as defined in this subdivision constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(4) “Directly used or consumed” in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include only:

(i) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;
(ii) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(iii) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(x) Serving as an operating supply for property undergoing transmission, manufacturing production or
production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xi) Maintaining or repairing of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xii) Storing, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(xiii) Engaging in pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(xiv) Otherwise using as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(B) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, communication or the production of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;
(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) “Directly used or consumed” in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus,
supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(iv) Tangible personal property, custom software or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(v) Tangible personal property, custom software or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.
(B) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of electric power, the provision of public utility service or the operation of a utility business.

(6) “Gas storage” means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(7) “Generating or producing or selling of electric power” means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

(8) “Gross proceeds” means the amount received in money, credits, property or other consideration from sales
and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

(9) “Includes” and “including”, when used in a definition contained in this article, does not exclude other things otherwise within the meaning of the term being defined.

(10) “Manufacturing” means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(11) “Person” means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(12) “Personal service” includes those: (A) Compensated by the payment of wages in the ordinary course of employment; and (B) rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(13) “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is
sold in predetermined units or dollars of which the number decline with use in a known amount.

(14) Production of natural resources.

(A) “Production of natural resources” means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

(B) For the natural resources oil and gas, “production of natural resources” means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced.

(C) All work performed to install or maintain facilities up to the point of sale for severance tax purposes is included in the “production of natural resources” and subject to the direct use concept.
“Production of natural resources” does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subdivision as “production of natural resources”.

“Providing a public service or the operating of a utility business” means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.

“Purchaser” means a person who purchases tangible personal property, custom software or a service taxed by this article.

“Sale”, “sales” or “selling” includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his or her agent for consumption or use or any other purpose. “Sale” also includes the furnishing of a service for consideration. Notwithstanding anything to the contrary in this code, effective after the thirtieth day of June, two thousand eight, “sale” also includes the furnishing of prepaid wireless calling service for consideration.

“Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property or custom software, but does not include contracting, personal
services or the services rendered by an employee to his or her employer or any service rendered for resale: Provided, That the term “service” or “selected service” does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer’s, distributor’s or other third party’s marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a “service” or “selected service” rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(19) “Streamlined Sales and Use Tax Agreement” or “agreement”, when used in this article, has the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word “agreement” is used clearly indicates that a different meaning is intended by the Legislature.

(20) “Tax” includes all taxes, additions to tax, interest and penalties levied under this article or article ten of this chapter.

(21) “Tax Commissioner” means the State Tax Commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(22) “Taxpayer” means any person liable for the tax imposed by this article or additions to tax, penalties and interest imposed by article ten of this chapter.
“(23) “Transmission” means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

“(24) “Transportation” means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

“(25) “Ultimate consumer” or “consumer” means a person who uses or consumes services or personal property.

“(26) “Vendor” means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

(c) Additional definitions. — Other terms used in this article are defined in article fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen of this chapter. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.


(a) The proceeds of the tax imposed by this article shall be deposited in the General Revenue Fund of the state except as otherwise expressly provided in this article.

(b) School Major Improvement Fund. --

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article, on the first day of each
month, there shall be dedicated monthly from the collections
of this tax, the amount of four hundred sixteen thousand six
hundred sixty-seven dollars and the amount dedicated shall
be deposited on a monthly basis into the School Major
Improvement Fund created pursuant to section six, article
nine-d, chapter eighteen of this code.

(c) *School Construction Fund. --*

After the payment or commitment of the proceeds or
collections of this tax for the purposes set forth in sections
sixteen and eighteen of this article:

(1) On the first day of each month, there shall be
dedicated monthly from the collections of this tax the amount
of one million four hundred sixteen thousand six hundred
sixty-seven dollars and the amount dedicated shall be
deposited into the School Construction Fund created pursuant
to section six, article nine-d, chapter eighteen of this code.

(2) Effective the first day of July, one thousand nine
hundred ninety-eight, there shall be dedicated from the
collections of this tax an amount equal to any annual
difference that may occur between the debt service payment
for the one thousand nine hundred ninety-seven fiscal year
for school improvement bonds issued under the Better School
Building Amendment under the provisions of article nine-c,
chapter eighteen of this code and the amount of funds
required for debt service on these school improvement bonds
in any current fiscal year thereafter. This annual difference
shall be prorated monthly, added to the monthly deposit in
subdivision (1) of this subsection and deposited into the
School Construction Fund created pursuant to section six,
article nine-d, chapter eighteen of this code.

(d) *Prepaid wireless calling service. --* The proceeds or
collections of this tax from the sale of prepaid wireless
service are dedicated as follows:
(1) The tax imposed by this article upon the sale of prepaid wireless calling service is in lieu of the wireless enhanced 911 fee imposed by section six-b, article six, chapter twenty-four of this code.

(2) Within thirty days following the end of each calendar month, the Tax Commissioner shall remit to the Public Service Commission the proceeds of the tax imposed by this article upon the sale of prepaid wireless calling service in the preceding month, determined as follows: For purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to one twelfth of the wireless enhanced 911 fees collected from prepaid wireless calling service under section six-b, article six, chapter twenty-four of this code during the period beginning on the first day of July, two thousand seven, and ending on the last day of June, two thousand eight. Beginning on the first day of July, two thousand nine, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the increase or decrease in the enhanced wireless 911 fees paid to the Public Service Commission under said section during the previous twelve months. The Public Service Commission shall receive, deposit and disburse the proceeds in the manner prescribed in said section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:
(1) “Commercial mobile radio service provider” or “CMRS provider” means cellular licensees, broadband personal communications services (PCS) licensees and specialized mobile radio (SMR) providers, as those terms are defined by the Federal Communications Commission, which offer on a post-paid or prepaid basis or via a combination of those two methods, real-time, two-way switched voice service that is interconnected with the public switched network and includes resellers of any commercial mobile radio service.

(2) “County answering point” means a facility to which enhanced emergency telephone system calls for a county are initially routed for response and where county personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

(3) “Emergency services organization” means the organization established under article five, chapter fifteen of this code.

(4) “Emergency service provider” means any emergency services organization or public safety unit.

(5) “Emergency telephone system” means a telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point, but does not include an enhanced emergency telephone system.

(6) “Enhanced emergency telephone system” means a telephone system which automatically connects the person dialing the primary emergency number to the county answering point and in which the telephone network system
automatically provides to personnel receiving the call, immediately on answering the call, information on the location and the telephone number from which the call is being made and, upon direction from the personnel receiving the call, routes or dispatches the call by telephone, radio or any other appropriate means of communication to emergency service providers that serve the location from which the call is made.

(7) “Prepaid wireless calling service” means prepaid wireless calling service as defined in section two, article fifteen, chapter eleven of this code.

(8) “Public agency” means the state and any municipality, county, public district or public authority which provides or has authority to provide fire fighting, police, ambulance, medical, rescue or other emergency services.

(9) “Public safety unit” means a functional division of a public agency which provides fire fighting, police, medical, rescue or other emergency services.

(10) “Telephone company” means any public utility and any CMRS provider which is engaged in the provision of telephone service whether primarily by means of wire or wireless facilities.

(11) “Comprehensive plan” means a plan pertaining to the installing, modifying or replacing of telephone switching equipment; a telephone utility’s response in a timely manner to requests for emergency telephone service by a public agency; a telephone utility’s responsibility to report to the Public Service Commission; charges and tariffs for the services and facilities provided by a telephone utility; and access to an emergency telephone system by emergency service organizations.
(12) “Technical and operational standards” means those standards of telephone equipment and processes necessary for the implementation of the comprehensive plan as defined in subdivision (11) of this subsection.

§24-6-6b. Wireless enhanced 911 fee.

(a) All CMRS providers as defined in section two of this article shall, on a monthly basis or otherwise for good cause and as directed by order of the Public Service Commission, collect from each of their in-state two-way service subscribers a wireless enhanced 911 fee. As used in this section “in-state two-way service subscriber” shall have the same meaning as that set forth in the rules of the Public Service Commission. No later than the first day of June, two thousand six, the Public Service Commission shall, after the receipt of comments and the consideration of evidence presented at a hearing, issue an updated order which directs the CMRS providers regarding all relevant details of wireless enhanced 911 fee collection, including the determination of who is considered an in-state two-way service subscriber and which shall specify how the CMRS providers shall deal with fee collection shortfalls caused by uncollectible accounts. The Public Service Commission shall solicit the views of the wireless telecommunications utilities prior to issuing the order.

(b) The wireless enhanced 911 fee is three dollars per month for each valid retail commercial mobile radio service subscription, as that term is defined by the Public Service Commission in its order issued under subsection (a) of this section: Provided, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: Provided, however, That for the fiscal
year beginning on the first day of July, two thousand five, and for every fiscal year thereafter, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of towers. The moneys shall be deposited in a fund administered by the West Virginia Public Service Commission, entitled Enhanced 911 Wireless Tower Access Assistance Fund, and shall be expended in accordance with an enhanced 911 wireless tower access matching grant order adopted by the Public Service Commission. The commission order shall contain terms and conditions designed to provide financial assistance loans or grants to state agencies, political subdivisions of the state and wireless telephone carriers for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage and which would not be available otherwise due to marginal financial viability of the applicable tower coverage area: Provided further, That the grants shall be allocated among potential sites based on application from county commissions demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any tower constructed with assistance from the fund created by this subdivision shall be available for use by emergency services, fire departments and law-enforcement agencies communication equipment, so long as that use does not interfere with the carrier’s wireless signal: And provided further, That the Public Service Commission shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code to effectuate the provisions of this subsection. The Public Service Commission is specifically authorized to promulgate emergency rules: And provided further, That for the fiscal year beginning on the first day of July, two thousand six, and for every fiscal year thereafter, five percent of the wireless enhanced 911 fee money received by the Public Service Commission shall be deposited in a special fund established by the Division of Homeland Security and Emergency Management to be used solely for
the construction, maintenance and upgrades of the West Virginia Interoperable Radio Project and any other costs associated with establishing and maintaining the infrastructure of the system. Any funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated for the following year.

(c) Beginning in the year one thousand nine hundred ninety-seven, and every two years thereafter, the Public Service Commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate the fee so that it is the weighted average rounded to the nearest penny, as of the first day of March of the respecification year, of all of the enhanced 911 fees imposed by the counties which have adopted an enhanced 911 ordinance: Provided, That the wireless enhanced 911 fee may never be increased by more than twenty-five percent of its value at the beginning of the respecification year: Provided, however, That the fee may never be less than the amount set in subsection (b) of this section: Provided further, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: And provided further, That beginning on the first day of July, two thousand five, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of wireless towers as specified in said subsection.

(d) The CMRS providers shall, after retaining a three-percent billing fee, send the wireless enhanced 911 fee moneys collected, on a monthly basis, to the Public Service Commission. The Public Service Commission shall, on a quarterly and approximately evenly staggered basis, disburse the fee revenue in the following manner:
(1) Each county that does not have a 911 ordinance in effect as of the original effective date of this section in the year one thousand nine hundred ninety-seven or has enacted a 911 ordinance within the five years prior to the original effective date of this section in the year one thousand ninety-seven shall receive eight and one-half tenths of one percent of the fee revenues received by the Public Service Commission: Provided, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Each county shall receive eight and one-half tenths of one percent of the remainder of the fee revenues received by the Public Service Commission: Provided, however, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Then, from any moneys remaining, each county shall receive a pro rata portion of that remainder based on that county's population as determined in the most recent decennial census as a percentage of the state total population. The Public Service Commission shall recalculate the county disbursement percentages on a yearly basis, with the changes effective on the first day of July, and using data as of the preceding first day of March. The public utilities which normally provide local exchange telecommunications service by means of lines, wires, cables, optical fibers or by other means extended to subscriber premises shall supply the data to the Public Service Commission on a county specific basis no later than the first day of June of each year;

(2) Counties which have an enhanced 911 ordinance in effect shall receive their share of the wireless enhanced 911
fee revenue for use in the same manner as the enhanced 911 fee revenues received by those counties pursuant to their enhanced 911 ordinances;

(3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue for each county which does not have an enhanced 911 ordinance in effect into an escrow account which it has established for that county. Any county with an escrow account may, immediately upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the escrow account for use as specified in subdivision (2) of this subsection: Provided, That a county that adopts a 911 ordinance after the original effective date of this section in the year one thousand nine hundred ninety-seven or has adopted a 911 ordinance within five years of the original effective date of this section in the year one thousand nine hundred ninety-seven shall continue to receive one percent of the total 911 fee revenue for a period of five years following the adoption of the ordinance. Thereafter, each county shall receive that county's eight and one-half tenths of one percent of the remaining fee revenue, plus that county's additional pro rata portion of the fee revenues then remaining, based on that county's population as determined in the most recent decennial census as a percentage of the state total population: Provided, however, That every five years from the year one thousand nine hundred ninety-seven, all fee revenue residing in escrow accounts shall be disbursed on the pro rata basis specified in subdivision (1) of this subsection, except that data for counties without enhanced 911 ordinances in effect shall be omitted from the calculation and all escrow accounts shall begin again with a zero balance.

(e) CMRS providers have the same rights and responsibilities as other telephone service suppliers in dealing with the failure by a subscriber of a CMRS provider to timely pay the wireless enhanced 911 fee.
(f) Notwithstanding the provisions of section one-a of this article, for the purposes of this section, the term "county" means one of the counties provided in section one, article one, chapter one of this code.

(g) From any funds distributed to a county pursuant to this section, a total of three percent shall be set aside in a special fund to be used exclusively for the purchase of equipment that will provide information regarding the x and y coordinates of persons who call an emergency telephone system through a commercial mobile radio service: Provided, That upon purchase of the necessary equipment, the special fund shall be dissolved and any surplus shall be used for general operation of the emergency telephone system as may otherwise be provided by law.

(h) Notwithstanding anything to the contrary in this code, beginning the first day of July, two thousand eight, prepaid wireless calling service is no longer subject to the wireless enhanced 911 fee.

CHAPTER 217

(Com. Sub. for S.B. 474 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed March 8, 2008; in effect ninety days from passage.] [Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9k, relating to providing a limited annual exemption from the consumers sales and service tax for purchases of eligible specified exempt Energy Star qualified products; specifying time period for exemption; and specifying definition.
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 §11-15-9k, to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9k. Annual exemption for purchases of energy efficient products.

(a) There is established an annual sales tax holiday on the sale of specified Energy Star qualified products from the taxes imposed by this article if:

1. (1)(A) The sales price of the specified Energy Star qualified product is two thousand five hundred dollars or less per purchase for noncommercial home or personal use; and

2. (B) The sale takes place in two thousand eight during a period beginning at 12:01 a.m. eastern daylight time on the first day of September and ending at 11:59 p.m. eastern daylight time on the seventh day of September; or

3. (2)(A) The sales price of the specified Energy Star qualified product is five thousand dollars or less per purchase for noncommercial home or personal use; and

4. (B) The sale takes place in two thousand nine during a period beginning at 12:01 a.m. eastern daylight time on the first day of September and ending at 11:59 p.m. eastern daylight time on the thirtieth day of November; or

5. (C) In two thousand ten during a period beginning at 12:01 a.m. eastern daylight time on the first day of September and ending at 11:59 p.m. eastern daylight time on the thirtieth day of November.
(b) This section does not apply to tangible personal property for use in a trade or business.

(c) Definition. -- As used in this section, the term "Energy Star qualified product" means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

CHAPTER 218

(Com. Sub. for S.B. 596- By Senators Helmick and Love)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]


Be it enacted by the Legislature of West Virginia:

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-2b. Telecommunications definitions.
§11-15B-10. Seller and third-party liability.
§11-15B-11. Seller registration under Streamlined Sales and Use Tax Agreement.
§11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.
§11-15B-14a. Application of general sourcing rules and exclusion from the rules.
§11-15B-18. Relief from certain liability for purchasers.
§11-15B-20. Telecommunication sourcing definitions.
§11-15B-28. Confidentiality and privacy protections under Model I.
§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.
§11-15B-32. Effective date.


1 (a) General. -- When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.
(b) **Terms defined.** —

1. "Agent" means a person appointed by a seller to represent the seller before the member states.

2. "Agreement" means the Streamlined Sales and Use Tax Agreement as defined in section two-a of this article.

3. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.

4. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where: (i) The products are otherwise distinct and identifiable; and (ii) the products are sold for one nonitemized price. A "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

   (A) "Distinct and identifiable products" does not include:

   (i) Packaging such as containers, boxes, sacks, bags and bottles or other materials such as wrapping, labels, tags and instruction guides that accompany the "retail sale" of the products and are incidental or immaterial to the "retail sale" thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags and express delivery envelopes and boxes;

   (ii) A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the "sales price" of the product purchased does not vary depending on the inclusion of the product "provided free of charge"; or
(iii) Items included in the member state's definition of "sales price", as defined in this section.

(B) The term "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card or price list.

(C) A transaction that otherwise meets the definition of a "bundled transaction", as defined in this subdivision, is not a "bundled transaction" if it is:

(i) The "retail sale" of tangible personal property and a service where the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service and the true object of the transaction is the service; or

(ii) The "retail sale" of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(iii) A transaction that includes taxable products and nontaxable products and the "purchase price" or "sales price" of the taxable products is de minimis.

(I) "De minimis" means the seller's "purchase price" or "sales price" of the taxable products is ten percent or less of the total "purchase price" or "sales price" of the bundled products.

(II) Sellers shall use either the "purchase price" or the "sales price" of the products to determine if the taxable
products are de minimis. Sellers may not use a combination of the "purchase price" and "sales price" of the products to determine if the taxable products are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) A transaction that includes products taxable at the general rate of tax and food or food ingredients taxable at a lower rate of tax and the "purchase price" or "sales price" of the products taxable at the general sales tax rate is de minimis. For purposes of this subparagraph, the term “de minimis” has the same meaning as ascribed to it under subparagraph (iii) of this paragraph.

(v) The "retail sale" of exempt tangible personal property, or food and food ingredients taxable at a lower rate of tax, and tangible personal property taxable at the general rate of tax where:

(I) The transaction includes "food and food ingredients", "drugs", "durable medical equipment", "mobility-enhancing equipment", “over-the-counter drugs”, "prosthetic devices" or medical supplies, all as defined in this article; and

(II) Where the seller's "purchase price" or "sales price" of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible personal property when making the fifty percent determination for a transaction.

(5) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. "Candy" shall not include any
preparation containing flour and shall require no refrigeration.

(6) “Clothing” means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

(A) “Clothing” shall include:

(i) Aprons, household and shop;

(ii) Athletic supporters;

(iii) Baby receiving blankets;

(iv) Bathing suits and caps;

(v) Beach capes and coats;

(vi) Belts and suspenders;

(vii) Boots;

(viii) Coats and jackets;

(ix) Costumes;

(x) Diapers, children and adult, including disposable diapers;

(xi) Ear muffs;

(xii) Footlets;

(xiii) Formal wear;

(xiv) Garters and garter belts;
120 (xv) Girdles;
121 (xvi) Gloves and mittens for general use;
122 (xvii) Hats and caps;
123 (xviii) Hosiery;
124 (xix) Insoles for shoes;
125 (xx) Lab coats;
126 (xxi) Neckties;
127 (xxii) Overshoes;
128 (xxiii) Pantyhose;
129 (xxiv) Rainwear;
130 (xxv) Rubber pants;
131 (xxvi) Sandals;
132 (xxvii) Scarves;
133 (xxviii) Shoes and shoe laces;
134 (xxix) Slippers;
135 (xxx) Sneakers;
136 (xxx) Socks and stockings;
137 (xxxii) Steel-toed shoes;
138 (xxxiii) Underwear;
(xxxiv) Uniforms, athletic and nonathletic; and 

(xxxv) Wedding apparel. 

(B) “Clothing” shall not include:

(i) Belt buckles sold separately;

(ii) Costume masks sold separately;

(iii) Patches and emblems sold separately;

(iv) Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures and thimbles; and

(v) Sewing materials that become part of “clothing” including, but not limited to, buttons, fabric, lace, thread, yarn and zippers.

(7) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with “clothing”. “Clothing accessories or equipment” are mutually exclusive of and may be taxed differently than apparel within the definition of “clothing”, “sport or recreational equipment” and “protective equipment”. The following list contains examples and is not intended to be an all-inclusive list. “Clothing accessories or equipment” shall include:

(a) Briefcases;

(b) Cosmetics;

(c) Hair notions, including, but not limited to, barrettes, hair bows and hair nets;

(d) Handbags;
(e) Handkerchiefs;

(f) Jewelry;

(g) Sunglasses, nonprescription;

(h) Umbrellas;

(i) Wallets;

(j) Watches; and

(k) Wigs and hair pieces.

(8) "Certified automated system" or "CAS" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(9) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller's sales and use tax functions other than the seller's obligation to remit tax on its own purchases.

(10) "Computer" means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(11) "Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

(12) "Delivered" means delivered to the purchaser by means other than tangible storage media.

(13) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to
a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

(14) "Dietary supplement" means any product, other than "tobacco", intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v), inclusive, of this paragraph;

(B) And is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required pursuant to 21 CFR §101.36 or in any successor section of the Code of Federal Regulations.

(15) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to
a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(16) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans; or

(C) Intended to affect the structure or any function of the human body.

(17) "Durable medical equipment" means equipment including repair and replacement parts for the equipment, but does not include "mobility-enhancing equipment", which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.
(18) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(19) "Eligible property" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in this state.

(20) “Energy Star qualified product” means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

(21) "Entity-based exemption" means an exemption based on who purchases the product or service or who sells the product or service. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(22) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, prepared food or tobacco.

(23) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(24) “Fur clothing” means “clothing” that is required to be labeled as a fur product under the Federal Fur Products Labeling Act (15 U. S. C.§69) and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. “Fur
"clothing" is human-wearing apparel suitable for general use but may be taxed differently from "clothing". For the purposes of the definition of "fur clothing", the term "fur" means any animal skin or part thereof with hair, fleece or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing, the hair, fleece or fur fiber has been completely removed.

(25) "Governing board" means the governing board of the Streamlined Sales and Use Tax Agreement.

(26) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter drugs".

(27) "Includes" and "including" when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(28) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(29) "Lease" includes rental, hire and license. "Lease" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.
(A) "Lease" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect or set-up the tangible personal property.

(iv) "Lease" or "rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U. S. C. 7701(h)(1).

(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code or other provisions of federal, state or local law.

(30) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.
(31) "Mobility-enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include "durable medical equipment", which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(32) "Model I seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(33) "Model II seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(34) "Model III seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(35) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR §201.66. The "over-the-counter drug" label includes:
(A) A “drug facts” panel; or

(B) A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.

(36) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(37) "Personal service" includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(38) (A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(B) "Prepared food" in subparagraph (ii), paragraph (A) of this subdivision does not include food that is only cut, repackaged or pasteurized by the seller, and eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code of 2001 so as to prevent food-borne illnesses.
(C) Additionally, "prepared food" as defined in this subdivision does not include:

(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in Sector 311, except Subsection 3118 (bakeries);

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

(39) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

(40) "Prewritten computer software" means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
(C) "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software: Provided, That where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(41) "Product-based exemption" means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(42) "Prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(43) "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(44) "Purchase price" means the measure subject to the tax imposed by article fifteen or fifteen-a of this chapter and has the same meaning as sales price.

(45) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.
"Registered under this agreement" means registration by a seller with the member states under the central registration system provided in article four of the agreement.

"Retail sale" or "sale at retail" means:

(A) Any sale, lease or rental for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

"Sales price" means the measure subject to the tax levied under articles fifteen or fifteen-a of this chapter and includes the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges; and

(v) Installation charges.

"Sales price" does not include:
(i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a
price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(49) "Sales tax" means the tax levied under article fifteen of this chapter.

(50) “School art supply” means an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms “school supply”, “school instructional material” and “school computer supply” and may be taxed differently. The following is an all-inclusive list:

(A) Clay and glazes;

(B) Paints; acrylic, tempora and oil;

(C) Paintbrushes for artwork;

(D) Sketch and drawing pads; and

(E) Watercolors.

(51) “School instructional material” means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms “school supply”, “school art supply” and “school computer supply” and may be taxed differently. The following is an all-inclusive list:

(A) Reference books;
(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks.

(52) “School computer supply” means an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms “school supply”, “school art supply” and “school instructional material” and may be taxed differently. The following is an all-inclusive list:

(A) Computer storage media; diskettes, compact disks;

(B) Handheld electronic schedulers, except devices that are cellular phones;

(C) Personal digital assistants, except devices that are cellular phones;

(D) Computer printers; and

(E) Printer supplies for computers; printer paper, printer ink.

(53) “School supply” means an item commonly used by a student in a course of study. The term is mutually exclusive of the terms “school art supply”, “school instructional material” and “school computer supply” and may be taxed differently. The following is an all-inclusive list of school supplies:

(A) Binders;

(B) Book bags;
(C) Calculators;
(D) Cellophane tape;
(E) Blackboard chalk;
(F) Compasses;
(G) Composition books;
(H) Crayons;
(I) Erasers;
(J) Folders; expandable, pocket, plastic and manila;
(K) Glue, paste and paste sticks;
(L) Highlighters;
(M) Index cards;
(N) Index card boxes;
(O) Legal pads;
(P) Lunch boxes;
(Q) Markers;
(R) Notebooks;
(S) Paper; loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board and construction paper;
(T) Pencil boxes and other school supply boxes;
(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets.

(54) "Seller" means any person making sales, leases or rentals of personal property or services.

(55) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale or any service furnished by a business that is subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this state. The term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third-party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of
615 tangible personal property as required under the programs or
616 agreements.

617 (56) "Soft drink" means nonalcoholic beverages that
618 contain natural or artificial sweeteners. "Soft drinks" do not
619 include beverages that contain milk or milk products, soy,
620 rice or similar milk substitutes or greater than fifty percent of
621 vegetable or fruit juice by volume.

622 (57) "Sport or recreational equipment" means items
623 designed for human use and worn in conjunction with an
624 athletic or recreational activity that are not suitable for
625 general use. “Sport or recreational equipment” are mutually
626 exclusive of and may be taxed differently than apparel within
627 the definition of “clothing”, “clothing accessories or
628 equipment” and “protective equipment”. The following list
629 contains examples and is not intended to be an all-inclusive
630 list. “Sport or recreational equipment” shall include:

631 (A) Ballet and tap shoes;
632 (B) Cleated or spiked athletic shoes;
633 (C) Gloves, including, but not limited to, baseball,
634 bowling, boxing, hockey and golf;
635 (D) Goggles;
636 (E) Hand and elbow guards;
637 (F) Life preservers and vests;
638 (G) Mouth guards;
639 (H) Roller and ice skates;
640 (I) Shin guards;
(J) Shoulder pads;

(K) Ski boots;

(L) Waders; and

(M) Wetsuits and fins.

(58) "State" means any state of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(59) "Tangible personal property" means personal property that can be seen, weighed, measured, felt or touched or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, steam, water, gas and prewritten computer software.

(60) "Tax" includes all taxes levied under articles fifteen and fifteen-a of this chapter and additions to tax, interest and penalties levied under article ten of this chapter.

(61) "Tax Commissioner" means the State Tax Commissioner or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(62) "Taxpayer" means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax penalties imposed by article ten of this chapter.

(63) "Telecommunications service" or "telecommunication service" when used in this article and articles fifteen and
fifteen-a shall have the same meaning as that term is defined in section two-b of this article.

(64) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

(65) "Use tax" means the tax levied under article fifteen-a of this chapter.

(66) "Use-based exemption" means an exemption based on a specified use of the product or service by the purchaser.

(67) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in articles fifteen and fifteen-a of this chapter.

(c) Additional definitions. -- Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into this article. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.


As used in this article and articles fifteen and fifteen-a of this chapter, the term "Streamlined Sales and Use Tax Agreement" or "agreement" means the agreement adopted the twelfth day of November, two thousand two, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. "Agreement" includes amendments to the agreement adopted by the implementing states in calendar years two thousand
three, two thousand four, two thousand five and amendments adopted by the governing board on or before the thirty-first day of January, two thousand eight, but does not include any substantive changes in the agreement adopted after the thirty-first day of January, two thousand eight.

§11-15B-2b. Telecommunications definitions.

(a) General. -- When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined. ---

(1) "Telecommunications service" or "telecommunication service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between or among points.

(A) The terms "telecommunications service" or "telecommunication service" includes the transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(B) "Telecommunications service" or "telecommunication service" does not include:

(i) Advertising, including, but not limited to, directory advertising;
(ii) "Ancillary services";

(iii) Billing and collection services provided to third parties;

(iv) Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;

(v) Digital products "delivered electronically", including, but not limited to, software, music, video, reading materials or ring tones;

(vi) Installation or maintenance of wiring or equipment on a customer's premises;

(vii) Internet access service;

(viii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U. S. C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3; or

(ix) Tangible personal property.

(2) Related or ancillary terms.--

The following terms are either used in subsection (a) of this section or are commonly associated with terms used in that subsection.
(A) "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877" and "888" toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

(B) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for collection services provided by the seller of the "telecommunications services" to the subscriber or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900 service" and any subsequent numbers designated by the Federal Communications Commission.

(C) "Coin-operated telephone service" means a "telecommunications service" paid for by inserting money into a telephone accepting direct deposits of money to operate.

(D) "Conference-bridging service" means an "ancillary service" that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference-bridging service" does not include the "telecommunications services" used to reach the conference bridge.

(E) "Detailed telecommunications billing service" means an "ancillary service" of separately stating information pertaining to individual calls on a customer's billing statement.

(F) "Directory assistance" means an "ancillary service" of providing telephone number information and/or address information.
(G) "Fixed wireless service" means a "telecommunications service" that provides radio communication between fixed points.

(H) "International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession.

(I) "Interstate" means a "telecommunications service" that originates in one United States state, territory or possession and terminates in a different United States state, territory or possession.

(J) "Intrastate" means a "telecommunications service" that originates in one United States state, territory or possession and terminates in the same United States state, territory or possession.

(K) "Mobile wireless service" means a "telecommunications service" that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, "telecommunications services" that are provided by a commercial mobile radio service provider.

(L) "Paging service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers and may include messages and/or sounds.

(M) "Pay telephone service" means a "telecommunications service" provided through any pay telephone.
(N) "Residential telecommunications service" means a "telecommunications service" or "ancillary services" provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, "telecommunications service" is considered residential if it is provided to and paid for by an individual resident rather than the institution.

(O) "Value-added nonvoice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

(P) "Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services" which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including "conference-bridging services".

(Q) "Voice mail service" means an "ancillary service" that enables the customer to store, send or receive recorded messages. "Voice mail service" does not include any "vertical services" that the customer may be required to have in order to utilize the "voice mail service".

(c) Effective date. -- This section enacted in the year two thousand six shall apply to purchases made on or after the first day of July, two thousand six.

§11-15B-10. Seller and third-party liability.

(a) (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for
the collection and remittance of sales and use taxes. As the
seller's agent, the certified service provider is liable for sales
and use tax due the state on all sales transactions it processes
for the seller except as set out in this section.

(2) A seller that contracts with a certified service provider
is not liable to the state for sales or use tax due on
transactions processed by the certified service provider unless
the seller misrepresented the type of items it sells or
committed fraud. In the absence of probable cause to believe
that the seller has committed fraud or made a material
misrepresentation, the seller is not subject to audit on the
transactions processed by the certified service provider. A
seller is subject to audit for transactions not processed by the
certified service provider. The member states acting jointly
may perform a system check of the seller and review the
seller's procedures to determine if the certified service
provider's system is functioning properly and the extent to
which the seller's transactions are being processed by the
certified service provider.

(b) A person that provides a certified automated system
is responsible for the proper functioning of that system and
is liable to the state for underpayments of tax attributable to
errors in the functioning of the certified automated system.
A seller that uses a certified automated system remains
responsible and is liable to the state for reporting and
remitting tax.

(c) A seller that has a proprietary system for determining
the amount of tax due on transactions and has signed an
agreement establishing a performance standard for that
system is liable for the failure of the system to meet the
performance standard.

§11-15B-11. Seller registration under Streamlined Sales and
Use Tax Agreement.
(a) General. -- A seller that registers to collect West Virginia sales and use taxes using the online sales and use tax registration system established under the Streamlined Sales and Use Tax Agreement is not required to also register under article twelve of this chapter unless the seller has sufficient presence in this state that provides at least the minimum contacts necessary for a constitutionally sufficient nexus for this state to require registration and payment of the registration tax under article twelve of this chapter.

(b) Registration by agent. -- A person appointed by a seller to represent the seller before the states that are members of the Streamlined Sales and Use Tax Agreement may register the seller under the agreement under uniform procedures approved by the governing board. The appointment of an agent shall be in writing and submitted to this state if requested by the Tax Commissioner.

(c) Cancellation of registration. -- A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the state any taxes collected.

§11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.

(a) Collection of tax. -- By registering under the Streamlined Sales and Use Tax Agreement, the seller agrees to collect and remit sales and use taxes as levied under articles fifteen and fifteen-a of this chapter for all taxable sales into this state as well as for all other states participating in the agreement. Subsequent withdrawal or revocation of a member state does not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.
(b) **Effect of registration.** -- If the state has withdrawn or been expelled from the Streamlined Sales and Use Tax Agreement, the Tax Commissioner may not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has a nexus with the state for any tax at any time.

§11-15B-14. **General sourcing definitions.**

(a) **Definition of receive or receipt.** -- For the purposes of subsection (a), section fifteen of this article, the terms "receive" and "receipt" mean:

1. Taking possession of tangible personal property;
2. Making first use of services; or
3. Taking possession or making first use of computer software or digital goods, whichever comes first.

(b) **Limitation.** -- The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

§11-15B-14a. **Application of general sourcing rules and exclusion from the rules.**

(a) Sellers shall source the sale of a product in accordance with section fifteen of this article. The provisions of said section apply regardless of the characterization of the product as tangible personal property, computer software or digital goods or a service. The provisions of said section only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.
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11 (b) Section fifteen of this article does not apply to sales
or use tax levied on telecommunication services as defined in
section two-b of this article. Telecommunication services
shall be sourced in accordance with section nineteen of this
article.


(a) General rule. -- For purposes of articles fifteen and
fifteen-a of this chapter, the retail sale, excluding lease or
rental, of a product shall be sourced as follows:

1 When the product is received by the purchaser at a
business location of the seller, the sale is sourced to that
business location.

2 When the product is not received by the purchaser at
a business location of the seller, the sale is sourced to the
location where receipt by the purchaser or the purchaser's
designated donee occurs, including the location indicated by
instructions for delivery to the purchaser or donee, known to
the seller.

3 When subdivisions (1) and (2) of this subsection do
not apply, the sale is sourced to the location indicated by an
address for the purchaser that is available from the business
records of the seller that are maintained in the ordinary
course of the seller's business when use of this address does
not constitute bad faith.

4 When subdivisions (1), (2) and (3) of this subsection do
not apply, the sale is sourced to the location indicated by
an address for the purchaser obtained during the
consummation of the sale, including the address of a
purchaser's payment instrument, if no other address is
available, provided use of this address does not constitute bad
faith.
(5) When none of the previous subdivisions of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property or computer software was shipped, from which the digital goods delivered electronically was first available for transmission by the seller or from which the service was provided: Provided, That any location that merely provided the digital transfer of the product sold is disregarded for these purposes.

(b) Lease or rental. — The lease or rental of tangible personal property or custom software, other than property identified in subsection (c) or (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location may not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on
(c) Vehicles. -- The lease or rental of motor vehicles, trailers, semitrailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(d) Sale or lease or rental of transportation equipment. -- The retail sale, including lease or rental, of transportation equipment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in said subsection. "Transportation equipment" means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
(2) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand pounds or greater, trailers, semitrailers or passenger buses that are:

   (A) Registered through the international registration plan; and

   (B) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3), inclusive, of this subsection.

(e) Exceptions. -- Subsections (a) and (b) of this section shall not apply to the following goods or services:

   (1) Telecommunications services, ancillary services and internet access services, as set out in section twenty of this article, shall be sourced in accordance with section nineteen of this article; and

   (2) Until the first day of January, two thousand ten, a seller who is primarily engaged in the retail sale of cut flowers and flower arrangements taking the original order to sell tangible personal property shall source the sale to the place where order was taken. For purposes of this exception, "primarily" means more than fifty percent of the seller's total gross sales or receipts are derived from that activity. In
determining if a seller is primarily a florist, the total sales price of cut flowers and floral arrangements includes separately stated delivery or service charges. After the thirty-first day of December, two thousand nine, sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this section.

(f) Product defined. -- As used in subsection (a) of this section, "product" includes tangible personal property, computer software or digital goods or a service, or any combination thereof.

§11-15B-18. Relief from certain liability for purchasers.

(a) A purchaser is relieved from liability for penalty to this state and local jurisdictions of this state for having failed to pay the correct amount of sales or use tax in the following circumstances:

(1) A purchaser’s seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments or in the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement;

(2) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments or in the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement;

(3) A purchaser relied on erroneous data provided by this state in the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement; or

(4) A purchaser using databases pursuant to subdivisions (3), (4) and (5), subsection (d), section thirty-five of this
article relied on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, this state, having provided an address-based database for assigning taxing jurisdictions pursuant to subdivisions (4) and (5), subsection (d), section thirty-five of this article, shall cease providing liability relief for errors resulting from the reliance on the database provided by this state under the provisions of subdivision (3), subsection (d), section thirty-five of this article.

(b) A purchaser is relieved from liability for tax and interest to this state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (a) of this section, provided that, with respect to reliance on the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement, relief is limited to the state’s erroneous classification in the taxability matrix of terms included in the Streamlined Sales and Use Tax Agreement library of definitions as “taxable” or “exempt”, “included in sales price” or “excluded from sales price” or “included in the definition” or “excluded from the definition”.

(c) For purposes of this section, the term “penalty” means an amount imposed for noncompliance that is not fraudulent, willful or intentional which is in addition to the correct amount of sales or use tax and interest.


(a) Except for the defined telecommunication services in subsection (c) of this section, the sale of telecommunication service sold on a call-by-call basis shall be sourced to: (1) Each level of taxing jurisdiction where the call originates and
terminates in that jurisdiction; or (2) each level of taxing
jurisdiction where the call either originates or terminates and
in which the service address is also located.

(b) Except for the defined telecommunication services in
subsection (c) of this section, a sale of telecommunication
service sold on a basis other than a call-by-call basis is
sourced to the customer's place of primary use.

(c) The sale of the following telecommunication services
shall be sourced to each level of taxing jurisdiction as
follows:

(1) A sale of mobile telecommunication service, other
than air-to-ground radiotelephone service and prepaid calling
service, is sourced to the customer's place of primary use, as
required by the Mobile Telecommunications Sourcing Act.

(2) A sale of post-paid calling service is sourced to the
origination point of the telecommunications signal as first
identified by either: The seller's telecommunications system,
or information received by the seller from its service
provider, where the system used to transport the signal is not
that of the seller.

(3) A sale of prepaid calling service or a sale of a prepaid
wireless calling service is sourced in accordance with section
fifteen of this article: Provided, That in the case of a sale of
a prepaid wireless calling service, the rule provided in
subdivision (5), subsection (a), section fifteen of this article
shall include, as an option, the location associated with the
mobile telephone number.

(4) A sale of a private communication service is sourced
as follows:

(A) Service for a separate charge related to a customer
channel termination point is sourced to each level of
jurisdiction in which the customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(E) The sale of internet access service is sourced to the customer’s place of primary use.

(F) The sale of an ancillary service is sourced to the customer’s place of primary use.

§11-15B-20. Telecommunication sourcing definitions.

For the purpose of this article, including section nineteen of this article, the following definitions apply:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
(2) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including, but not limited to, "detailed telecommunications billing", "directory assistance", "vertical service" and "voice mail services".

(3) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(4) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(5) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section nineteen of this article. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(6) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(7) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.
(8) "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(9) "Mobile telecommunications service" means the same as that term is defined in Section 124 (7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(10) "Place of primary use" means the street address representative where the customer's use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(11) "Post-paid calling service" means the telecommunication service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A post-paid calling service includes a telecommunication service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

(12) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(13) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize
mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(14) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of the channel or channels.

(15) "Service address" means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in paragraph (A) of this subdivision is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or

(C) If the location in paragraphs (A) and (B) of this subdivision are not known, then "service address" means the location of the customer's place of primary use.

(a) General rules. -- When a purchaser claims an exemption from paying tax under article fifteen or fifteen-a of this chapter:

(1) Sellers shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase, as determined by the governing board.

(2) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.

(3) The seller shall use the standard form for claiming an exemption electronically that is adopted by the governing board.

(4) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(5) The Tax Commissioner may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that is presented to the seller at the time of the sale.

(6) The seller shall maintain proper records of exempt transactions and provide the records to the Tax Commissioner or the Tax Commissioner's designee.

(7) The Tax Commissioner shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate or another means that does not burden sellers.

(8) After the thirty-first day of December, two thousand seven, in the case of drop shipments, a third-party vendor such as a drop shipper may claim a resale exemption based
on an exemption certificate provided by its customer/reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer/reseller is registered to collect and remit sales and use taxes in this state, when the sale is sourced to this state.

(b) The Tax Commissioner shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and shall hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply:

(A) To a seller who fraudulently fails to collect the tax;

(B) To a seller who solicits purchasers to participate in the unlawful claim of an exemption;

(C) To a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:

(i) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and (ii) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on uniform form and posting it on a state's website is an indicator) that the claimed exemption is not available in that state.

(c) **Time within which seller must obtain exemption certificates.** -- A seller is relieved from paying tax otherwise applicable under article fifteen or fifteen-a of this chapter if the seller obtains a fully completed exemption certificate or captures the required data elements within ninety days subsequent to the date of sale.
If the seller has not obtained an exemption certificate or all required data elements, the seller may, within one hundred twenty days subsequent to a request for substantiation by the Tax Commissioner, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, the Tax Commissioner may continue to apply this state's standards of good faith until a uniform standard for good faith is defined in the Streamlined Sales and Use Tax Agreement.

(2) Nothing in this section shall affect the ability of the Tax Commissioner to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

(3) Notwithstanding the preceding provisions of this section, when an exemption may be claimed by exemption certificate, a seller is relieved from paying the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship. The Tax Commissioner may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subdivision, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

(d) Exception. - No exemption certificate or direct pay permit number is required when the sale is exempt per se from the taxes imposed by articles fifteen and fifteen-a of this chapter.


(a) General. -- A seller who registers with this state is required to file one sales/use tax return with the Tax Commissioner for each taxing period.
(b) Due date of return. -- This return shall be due on the twentieth day of the month following the month in which the transaction subject to tax occurred.

(c) Additional information returns. -- The Tax Commissioner shall allow any Model I, Model II or Model III seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The Tax Commissioner may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.

(d) The Tax Commissioner shall allow any seller that is registered with this state under the Streamlined Sales and Use Tax Agreement which does not have a legal requirement to register in this state under article twelve of this chapter and is not a Model I, II or III seller to submit its sales and use tax returns as follows:

1. Upon registration, the Tax Commissioner shall provide to the seller the returns required by this state.

2. The Tax Commissioner may require a seller to file a return anytime within one year of the month of initial registration and future returns may be required on an annual basis in succeeding years.

3. In addition to the returns required in subdivision (2) of this subsection, a seller shall submit a return by the twentieth day of the month following any month in which the seller accumulated state and local tax funds for the state in the amount of one thousand dollars or more.

4. The Tax Commissioner shall participate with other states that are members of the Streamlined Sales and Use Tax Agreement in developing a more uniform sales and use tax return that, when completed, is available to all sellers.
(5) All Model I, II and III sellers shall file returns electronically after the first day of January, two thousand four.


(a) General. -- Only one remittance is required for each return except as provided in this section.

(b) When electronic remittance required. -- All remittances from sellers under Models I, II and III shall be remitted electronically after the thirty-first day of December, two thousand three.

(c) Method of remittance. -- Electronic payments shall be made using either the ACH credit or ACH debit method.

(d) Alternative method. -- The Tax Commissioner shall provide by rule, which may be an existing rule, an alternative method for making "same day" payments if an electronic funds transfer fails.

(e) Format of data accompany remittance. -- Any data that accompanies a remittance shall be formatted using uniform tax type and payment type codes approved by the governing board.


(a) General. -- A deduction from taxable sales is allowed for bad debts. Any deduction taken that is attributed to bad debts may not include interest or any amount upon which the sales or use tax imposed by this state was not previously paid.

(b) "Bad debt" defined. -- The term "bad debt" has the same meaning as when used in the federal definition of "bad
8 debt" in 26 U. S. C. §166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U. S. C. §166 is adjusted to exclude:

11 (1) Financing charges or interest;
12 (2) Sales or use taxes charged on the purchase price;
13 (3) Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
15 (4) Expenses incurred in attempting to collect any debt;
17 or
18 (5) Repossessed property.

(c) When deduction may be taken. -- Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this section, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(d) Subsequent recovery. -- If a deduction is taken for a bad debt and the debt is subsequently collected, in whole or in part, the tax on the amount collected shall be paid and reported on the return filed for the period in which the collection is made.

(e) When bad debt deduction exceeds taxable sales. -- When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off,
a refund claim may be filed within the period specified in section fourteen, article ten of this chapter, for filing a claim for refund of sales or use tax, except that the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(f) *When certified service provider is used.* -- Where filing responsibilities of the seller have been assumed by a certified service provider, the certified service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider shall credit or refund to the seller the full amount of any bad debt allowance or refund received under this section.

(g) *Reporting of payment received on previously claimed bad debt.* -- For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(h) *Allocation.* -- In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among two or more states that are members of the Streamlined Sales and Use Tax Agreement, the allocation is permitted.

§11-15B-28. **Confidentiality and privacy protections under Model I.**

(a) *Purpose.* -- The purpose of this section is to set forth the policy of this state for the protection of the confidentiality rights of all participants in the streamlined sales and use tax administration and collection system and of the privacy interests of consumers who deal with Model I sellers.
(b) Certain terms defined. -- As used in this section:

(1) The term "confidential taxpayer information" means all information that is protected under section five-d, article ten of this chapter;

(2) The term "personally identifiable information" means information that identifies a person; and

(3) The term "anonymous data" means information that does not identify a person.

(c) Certified service providers. -- With very limited exceptions, a certified service provider shall perform its tax calculation, remittance and reporting functions without retaining the personally identifiable information of consumers.

(d) Certification of service providers. -- The governing board may certify a service provider only if that certified service provider certifies that:

(1) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(2) That personally identifiable information is only used and retained to the extent necessary for the administration of Model I with respect to exempt purchasers;

(3) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. This notice is satisfied by a written privacy policy statement accessible by the public on the official website of the certified service provider;
(4) Its collection, use and retention of personally identifiable information is limited to that required by the states that are members of the Streamlined Sales and Use Tax Agreement to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(5) It provides adequate technical, physical and administrative safeguards as to protect personally identifiable information from unauthorized access and disclosure.

(e) State notification of privacy policy. -- The Tax Commissioner shall provide public notification to consumers, including their exempt purchasers, of this state's practices relating to the collection, use and retention of personally identifiable information.

(f) Destruction of confidential information. -- When any personally identifiable information that has been collected and retained by the Tax Commissioner is no longer required for the purposes set forth in subdivision (4), subsection (d) of this section, the information shall no longer be retained by the Tax Commissioner.

(g) Review and correction by individuals. -- When personally identifiable information regarding an individual is retained by or on behalf of the Tax Commissioner, the commissioner shall provide reasonable access by an individual to his or her own information in the commissioner's possession and a right to correct any inaccurately recorded information.

(h) Discovery by other persons. -- If anyone other than the individual, or a person authorized in writing by the individual, or by controlling law seeks to discover personally identifiable information, the Tax Commissioner shall make a reasonable and timely effort to notify the individual of the request.
(i) **Enforcement.** -- This privacy policy shall be enforced by the Tax Commissioner or the Attorney General of this state.

(j) This section shall not be interpreted as limiting or abrogating any other statutory or regulatory provision of this state regarding the collection, use and maintenance of confidential taxpayer information, which provisions remain fully applicable and binding. This section and the Streamlined Sales and Use Tax Agreement do not enlarge or limit the authority of this state to:

1. Conduct audits or other reviews as provided under the Streamlined Sales and Use Tax Agreement and state law;
2. Provide records pursuant to the Freedom of Information Act, disclosure laws with governmental agencies or other laws or regulations;
3. Prevent, consistent with state law, disclosures of confidential taxpayer information;
4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; or
5. Collect, disclose, disseminate or otherwise use anonymous data for governmental purposes.

(k) *Service provider's confidentiality policy may be more restrictive.* -- This privacy policy does not preclude the governing board from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement or the laws of this state.

§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.
(a) Monetary allowance under Model I. —

(1) The Tax Commissioner shall provide a monetary allowance to a certified service provider in Model I. This allowance shall be in accordance with the terms of the contract between the governing board of the Streamlined Sales and Use Tax Agreement and the certified service provider. The details of this monetary allowance shall be developed and provided through the contract process. The contract shall provide that the allowance be funded entirely from money collected in Model I.

(2) The contract between the governing board and the certified service provider may base the monetary allowance to a certified service provider on one or more of the following:

(A) A base rate that applies to taxable transactions processed by the certified service provider; or

(B) For a period not to exceed twenty-four months following a voluntary seller's registration through the agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

(b) Monetary allowance for Model II sellers. — The monetary allowance to sellers under Model II may be based on the following:

(1) All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate is set by the governing board of the Streamlined Sales and Use Tax Agreement after the base rate has been established for Model
I certified service providers. This allowance is in addition to any vendor or seller discount afforded by each member state at the time.

(2) A voluntary Model II seller not otherwise required to register with this state to collect the consumers sales and service tax and use tax, that registers through the Streamlined Sales and Use Tax Agreement's central registration process, shall receive for a period not to exceed twenty-four months following the voluntary seller’s registration, the base rate percentage of tax revenue generated for this state by the voluntary seller.

(3) Following the conclusion of the 24-month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.

(c) Monetary allowance for Model III sellers and all other sellers that are not under Model I or II.

A monetary allowance to sellers under Model III and to all other sellers registered under the agreement that are not sellers under Model I or II may be allowed based on the following:

(1) For a period not to exceed twenty-four months following a voluntary seller's registration through the agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax; and

(2) Vendor discounts afforded under each member state's law.

(d) Prohibition on allowance or payment of monetary allowances.
Notwithstanding subsections (a), (b) and (c) of this section, the Tax Commissioner may not allow any vendor, seller or certified service provider any monetary allowance, discount or other compensation for collecting and remitting the taxes levied by articles fifteen and fifteen-a of this chapter, or for making and filing the periodic reports required by this article, or articles fifteen and fifteen-a of this chapter, until the cost of collection study required by the agreement is completed and the monetary allowances are based on the results of that study, or on requirements of federal law requiring remote sellers to collect sales and use taxes for states that have signed the agreement.

§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date.

(c) The provisions of this article, as amended or added by Act of the Legislature in the year two thousand four, shall apply to all sales made on or after the date of passage in the year two thousand four.

(d) The provisions of this article, as amended or added during the regular legislative session in the year two thousand eight, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.
AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.


1 (a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the
determination of income for federal income tax purposes. All
amendments made to the laws of the United States after the
thirty-first day of December, two thousand six, but prior to
the fourteenth day of February, two thousand eight, 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 fourteenth day of February, two
thousand eight, shall be given any effect.

(b) *Medical savings accounts.* -- The term "taxable trust"
does not include a medical savings account established
pursuant to section twenty, article fifteen, chapter thirty-three
of this code or section fifteen, article sixteen of said chapter.
Employer contributions to a medical savings account
established pursuant to said sections are not "wages" for
purposes of withholding under section seventy-one of this
article.

(c) *Surtax.* -- The term "surtax" means the twenty percent
additional tax imposed on taxable withdrawals from a
medical savings account under section twenty, article fifteen,
chapter thirty-three of this code and the twenty percent
additional tax imposed on taxable withdrawals from a
medical savings account under section fifteen, article sixteen
of said chapter which are collected by the Tax Commissioner
as tax collected under this article.

(d) *Effective date.* -- The amendments to this section
enacted in the year two thousand eight 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 nine, the law in effect for each of those years
shall be fully preserved as to that year, except as provided in
this section.
(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

CHAPTER 220

(Com. Sub. for S.B. 541 - By Senators Bowman and Kessler)

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §11-21-12d of the Code of West Virginia, 1931, as amended, relating to retroactively applying and extending the personal income tax adjustment to the gross income of certain retirees receiving pensions from defined pension plans that terminated and are being paid a reduced maximum benefit guarantee.

Be it enacted by the Legislature of West Virginia:

That §11-21-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.
§11-21-12d. Additional modification reducing federal adjusted gross income.

In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any person who retires under an employer-provided defined benefit pension plan that terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled had the plan not terminated may subtract annually from his or her federal adjusted income a sum equal to the difference in the amount of the maximum annual pension benefit the person would have received for such tax year had the plan not terminated and the maximum annual pension benefit actually received from the guarantor under a benefit guarantee plan: Provided, That if the Tax Commissioner determines that this adjustment reduces the revenues of the state by two million dollars or more in any one year, then the Tax Commissioner shall reduce the percentage of the reduction to a level at which the commissioner believes will reduce the cost of the adjustment to two million dollars for the next year. This tax adjustment shall be effective for taxable years beginning on and after the first day of January, two thousand eight: Provided, however, That for the taxable year two thousand seven, the tax adjustment shall be effective and shall apply retroactively: Provided further, That the adjustment shall terminate for the tax years on or after the first day of January, two thousand twelve. This modification is available regardless of the type of return form filed.
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 six, but prior to the fourteenth
day of February, two thousand eight, 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 fourteenth day of February, two thousand eight,
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 eight 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 nine, 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 and reenact §11-24-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-24-4b, all relating generally to the manner in which the corporate net income tax is to be imposed on business entities; providing definitions of terms relating to insurance companies, unitary businesses and certain trusts and investment companies; and establishing the applicability of the tax upon real estate investment trusts, regulated investment companies, qualified real estate investment trusts and qualified regulated investment companies.

Be it enacted by the Legislature of West Virginia:

That §11-24-3a 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 §11-24-4b, all to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Special terms defined.
§11-24-4b. Regulated investment companies and real estate investment trusts subject to tax.
§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.** -- The term "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 thirteen-a of this article in determining the taxpayer's share of the net business income or loss apportionable to this state.

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

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*Clerk's Note:* This section was also amended by SB 680 (Chapter 215), which passed prior to this act.
of this state, wherever located, which if it were doing business in this state would be subject to the tax imposed by this article. 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 or her 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.

(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.

(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.

(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.

(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.

(11) **Financial organization.** -- The term “financial
organization” means:

(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
1956 or registered as a savings and loan holding company
other than a diversified savings and loan holding company as
defined in Section 408(a)(1)(F) of the federal National
Housing Act, 12 U. S. C. §1730(a)(1)(F);

(B) A regulated financial corporation or a subsidiary
thereof. As used in this section “regulated financial
corporation” means:

(i) An institution, the deposits, shares or accounts of
which are insured under the Federal Deposit Insurance Act or
by the federal Savings and Loan Insurance Corporation;

(ii) An institution that is a member of a federal home loan
bank;

(iii) Any other bank or thrift institution incorporated or
organized under the laws of a state that is engaged in the
business of receiving deposits;
(iv) A credit union incorporated and organized under the laws of this state;

(v) A production credit association organized under 12 U. S. C. §2071;

(vi) A corporation organized under 12 U. S. C. §611 through §631 (an Edge Act corporation); or

(vii) A federal or state agency or branch of a foreign bank as defined in 12 U. S. C. §3101; or

(C) A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:

(i) 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.

(ii) 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 CFR 225.25(b)(5).
(iii) Operating a credit card business.

(iv) Rendering estate or trust services.

(v) Receiving, maintaining or otherwise handling deposits.

(vi) Engaging in any other activity with an economic effect comparable to those activities described in subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph.

(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, do not exclude other things otherwise within the meaning of the term being defined.

(14) *Insurance company.* -- The term “insurance company” means any corporation subject to taxation under section twenty-two, article three, chapter twenty-nine of this code or chapter thirty-three of this code or an insurance carrier subject to the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code or any corporation that would be subject to taxation under any of those provisions were its business transacted in this state.

(15) "Internal Revenue Code" means the Internal Revenue Code as defined in section three of this article, without regard to application of federal treaties unless expressly made applicable to states of the United States.
(16) **Nonbusiness income.** -- The term “nonbusiness income” means all income other than business income.

(17) “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.

(18) **Person.** -- The term “person” is considered 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.

(19) **Pro forma return.** -- The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an affiliated group.

(20) **Public utility.** -- The term “public utility” means any business activity to which the jurisdiction of the Public Service Commission of West Virginia extends under section one, article two, chapter twenty-four of this code.

(21) **Qualified real estate investment trust.** -- The term “Qualified Real Estate Investment Trust” means any real estate invest trust where no single entity owns or controls, directly or indirectly, constructively or otherwise, fifty percent or more of the voting power or value of the beneficial interests or shares of the trust, if the single entity is;
(A) Subject to the provisions of subchapter C, chapter 1, subtitle A, title 26 of the United States Code, as amended;

(B) Not exempt from federal income tax pursuant to the provisions of Section 501 of the Internal Revenue Code of 1986, as amended; and

(C) Not a real estate invest trust as defined in this section or a qualified real estate invest trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended.

(22) Qualified regulated investment company. -- The term “Qualified Regulated Investment Company” means any regulated company where no single entity owns or controls, directly or indirectly, constructively or otherwise, fifty percent or more of the voting power or value of the beneficial interests or shares of the company, if the single entity is:

(A) Subject to the provision of subchapter C, chapter 1, subtitle A, title 26 of the United States Code, as amended;

(B) Not exempt from federal income tax pursuant to the provision of Section 501 of the Internal Revenue Code of 1986, as amended; and

(C) Not a regulated investment company as defined in Section 3 of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-3.

(23) Real estate investment trust. -- The term “Real Estate Investment Trust” has the meaning ascribed to such term in Section 856 of the Internal Revenue Code of 1986, as amended.

(24) Regulated investment company. -- The term “Regulated Investment Company” has the same meaning as
ascribed to such term in Section 851 of the Internal Revenue Code of 1986, as amended.

(25) **Sales.** -- The term “sales” means all gross receipts of the taxpayer that are “business income” as defined in this section.

(26) **State.** -- The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof.

(27) **Taxable year, tax year.** -- The term “taxable year” or “tax year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(28) **Tax.** -- The term “tax” includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(29) **Tax Commissioner.** -- The term “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or his or her delegate.

(30) “Tax haven” means a jurisdiction that, for a particular tax year in question: (A) Is identified by the Organization for Economic Cooperation and Development as 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 benefitting from, the tax regime; (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.

(31) **Taxpayer.** -- The term “taxpayer” means any person subject to the tax imposed by this article.

(32) **This code.** -- The term “this code” means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

(33) **This state.** -- The term “this state” means the State of West Virginia.

(34) “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.

(35) “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. For purposes of this article and article twenty-three of this chapter, any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or the percentage of its distributive or any other share of partnership income. A business conducted directly or indirectly by one corporation through its direct or indirect interest in a partnership is unitary with that portion of a business conducted by one or more other corporations through their direct or indirect interest in a partnership if there is 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 and the corporations are members of the same commonly controlled group.

(36) 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 the portion of its taxable income as defined and adjusted as is allocated or apportioned to this state under the provisions of this article.

§11-24-4b. Regulated investment companies and real estate investment trusts subject to tax.
(a) The tax imposed by this article shall be imposed upon regulated investment companies as defined by this article, and shall be computed only upon that part of the net income of the regulated investment company which is subject to federal income tax as provided in Sections 852 and 4982 of the Internal Revenue Code of 1986, as amended, except as otherwise provided in this section.

(b) The dividend paid deduction otherwise allowed by a federal law in computing net income of a regulated investment company that is subject to federal income tax shall be added back in computing the tax imposed by this article unless the regulated invested company is a qualified regulated investment company, as defined in this article.

(c) The tax imposed by this article shall be imposed upon real estate investment trusts and shall be computed only upon that part of the net income of the real estate investment trust which is subject to federal income tax as provided in Sections 857 and 858 of the Internal Revenue Code of 1986, as amended, except as otherwise provided in this section.

(d) The dividend paid deduction otherwise allowed by federal law in computing net income of real estate investment trusts that is subject to federal income tax shall be added back in computing the tax imposed by this article unless the real estate investment trust is either:

(1) Publicly traded on an established securities market; or,

(2) A qualified real estate investment trust, as defined in this article.
AN ACT to amend and reenact §18A-4-2, §18A-4-3 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to school personnel salary increases; increasing minimum salaries of public school teachers; increasing salary increment for principals and assistant principals; and increasing minimum salaries of school service personnel.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2, §18A-4-3 and §18A-4-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

1 (a) Effective the first day of July, two thousand seven, through the thirtieth day of June, two thousand eight, each teacher shall receive the amount prescribed in the 2007-08 State Minimum Salary Schedule as set forth in this section,
specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

Effective the first day of July, two thousand eight, and thereafter, each teacher shall receive the amount prescribed in the 2008-09 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

2007-08 MINIMUM SALARY SCHEDULE

<table>
<thead>
<tr>
<th>(1)</th>
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<th>(4)</th>
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<th>(6)</th>
<th>(7)</th>
<th>(8)</th>
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Exp. | Class | Class | Class | A.B. | +15 | M.A. | +15 | +30 | +45 | torate |
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| 1   | 24,379 | 25,039 | 25,303 | 26,745 | 27,506 | 29,274 | 30,035 | 30,795 | 31,556 | 32,591 |
| 2   | 24,708 | 25,367 | 25,631 | 27,264 | 28,025 | 29,792 | 30,553 | 31,314 | 32,075 | 33,110 |
| 3   | 25,036 | 25,695 | 25,959 | 27,783 | 28,543 | 30,311 | 31,072 | 31,832 | 32,593 | 33,628 |
| 4   | 25,608 | 26,267 | 26,531 | 28,545 | 29,306 | 31,074 | 31,835 | 32,595 | 33,356 | 34,391 |
| 5   | 25,936 | 26,595 | 26,859 | 29,064 | 29,825 | 31,592 | 32,353 | 33,114 | 33,875 | 34,910 |
| 6   | 26,264 | 26,923 | 27,187 | 29,582 | 30,343 | 32,111 | 32,872 | 33,632 | 34,393 | 35,428 |
| 7   | 26,592 | 27,252 | 27,515 | 30,101 | 30,862 | 32,629 | 33,390 | 34,151 | 34,912 | 35,947 |
| 8   | 26,920 | 27,580 | 27,844 | 30,619 | 31,380 | 33,148 | 33,909 | 34,669 | 35,430 | 36,465 |
| 9   | 27,248 | 27,908 | 28,172 | 31,138 | 31,899 | 33,666 | 34,427 | 35,188 | 35,949 | 36,984 |
| 10  | 27,577 | 28,236 | 28,500 | 31,657 | 32,417 | 34,185 | 34,946 | 35,706 | 36,467 | 37,502 |
| 11  | 27,905 | 28,564 | 28,828 | 32,175 | 32,936 | 34,704 | 35,464 | 36,225 | 36,986 | 38,021 |
| 12  | 28,233 | 28,892 | 29,156 | 32,694 | 33,454 | 35,222 | 35,983 | 36,744 | 37,504 | 38,539 |
| 13  | 28,561 | 29,220 | 29,484 | 33,212 | 33,973 | 35,741 | 36,501 | 37,262 | 38,023 | 39,058 |
| 14  | 28,561 | 29,548 | 29,812 | 33,731 | 34,491 | 36,259 | 37,020 | 37,781 | 38,541 | 39,576 |
| 15  | 28,561 | 29,876 | 30,140 | 34,249 | 35,010 | 36,778 | 37,538 | 38,299 | 39,060 | 40,095 |
### 2008-09 STATE MINIMUM SALARY SCHEDULE

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(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

(a) In addition to any salary increments for principals and assistant principals, in effect on the first day of January, two thousand eight, and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal a principal's salary increment and each assistant principal an assistant principal's salary increment as prescribed by this section from state funds appropriated for the salary increments.

(b) State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code.

(c) The salary increment in this section for each principal shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of the principal as prescribed in this article by the appropriate percentage rate prescribed in this section according to the number of teachers supervised.

STATE MINIMUM SALARY INCREMENT RATES FOR PRINCIPALS EFFECTIVE UNTIL JULY 1, 2008
### Teachers' Pay Raise

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</tr>
<tr>
<td>8-14</td>
<td>10.5%</td>
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<tr>
<td>39-57</td>
<td>12.0%</td>
</tr>
<tr>
<td>58 and up</td>
<td>12.5%</td>
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</table>

**State Minimum Salary Increment Rates for Principals**

**Effective on and After July 1, 2008**

<table>
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<th>No. of Teachers</th>
<th>Supervised Rates</th>
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<td>13.0%</td>
</tr>
<tr>
<td>58 and up</td>
<td>13.5%</td>
</tr>
</tbody>
</table>
(d) The salary increment in this section for each assistant principal shall be determined in the same manner as that for principals using the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for the principal.

(e) Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

(f) For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: Provided, That if there is a change in circumstances because of consolidation or catastrophe, the county board shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

(g) No county may reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, two thousand eight, and used in supplementing the state minimum salaries as provided in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making the reduction.

(h) Nothing in this section prevents a county board from providing, in a uniform manner, salary increments greater than those required by this section.

§18A-4-8a. Service personnel minimum monthly salaries.
(a) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the state minimum pay scale pay grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the state minimum pay scale pay grade set forth in this section.

### STATE MINIMUM PAY SCALE PAY GRADE

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Class Title          Pay Grade

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Accountant II         E
Accountant III        F
Accounts Payable Supervisor G
Aide I                A
Aide II ............................................ B
Aide III ........................................... C
Aide IV ............................................ D
Audiovisual Technician ......................... C
Auditor ............................................ G
Autism Mentor ................................... F
Braille or Sign Language Specialist .......... E
Bus Operator ..................................... D
Buyer .............................................. F
Cabinetmaker .................................... G
Cafeteria Manager ................................. D
Carpenter I ...................................... E
Carpenter II .................................... F
Chief Mechanic ................................ G
Clerk I ............................................ B
Clerk II ........................................... C
Computer Operator .............................. E
Cook I ............................................. A
Cook II .......................................... B
Cook III ......................................... C
Crew Leader ..................................... F
Custodian I .......................................................... A
Custodian II ......................................................... B
Custodian III ....................................................... C
Custodian IV ....................................................... D
Director or Coordinator of Services ......................... H
Draftsman .......................................................... D
Electrician I ......................................................... F
Electrician II ....................................................... G
Electronic Technician I ........................................ F
Electronic Technician II ....................................... G
Executive Secretary ............................................. G
Food Services Supervisor ....................................... G
Foreman ............................................................. G
General Maintenance ........................................... C
Glazier ............................................................... D
Graphic Artist ..................................................... D
Groundsman ........................................................ B
Handyman .......................................................... B
Heating and Air Conditioning Mechanic I ................. E
Heating and Air Conditioning Mechanic II ............... G
Heavy Equipment Operator ................................... E
<table>
<thead>
<tr>
<th>Position</th>
<th>Grade</th>
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<tr>
<td>Inventory Supervisor</td>
<td>D</td>
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<tr>
<td>Key Punch Operator</td>
<td>B</td>
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<tr>
<td>Licensed Practical Nurse</td>
<td>F</td>
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<td>Locksmith</td>
<td>G</td>
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<td>Lubrication Man</td>
<td>C</td>
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<tr>
<td>Machinist</td>
<td>F</td>
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<tr>
<td>Mail Clerk</td>
<td>D</td>
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<tr>
<td>Maintenance Clerk</td>
<td>C</td>
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<td>Mason</td>
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<tr>
<td>Mechanic</td>
<td>F</td>
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<td>Mechanic Assistant</td>
<td>E</td>
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<td>Office Equipment Repairman I</td>
<td>F</td>
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<tr>
<td>Office Equipment Repairman II</td>
<td>G</td>
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<td>Painter</td>
<td>E</td>
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<td>F</td>
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<td>Payroll Supervisor</td>
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<tr>
<td>Plumber I</td>
<td>E</td>
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<tr>
<td>Plumber II</td>
<td>G</td>
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<td>Printing Operator</td>
<td>B</td>
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<tr>
<td>Printing Supervisor</td>
<td>D</td>
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<tr>
<td>Programmer</td>
<td>H</td>
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Roofing/Sheet Metal Mechanic .................................. F
Sanitation Plant Operator ........................................... G
School Bus Supervisor .................................................. E
Secretary I ................................................................. D
Secretary II ................................................................. E
Secretary III ............................................................... F
Supervisor of Maintenance ............................................. H
Supervisor of Transportation ......................................... H
Switchboard Operator-Receptionist ................................. D
Truck Driver ............................................................... D
Warehouse Clerk ......................................................... C
Watchman ................................................................. B
Welder ........................................................................... F
WVEIS Data Entry and Administrative Clerk .................. B

1  (b) An additional twelve dollars per month shall be added
2  to the minimum monthly pay of each service employee who
3  holds a high school diploma or its equivalent.

4  (c) An additional eleven dollars per month also shall be
5  added to the minimum monthly pay of each service employee
6  for each of the following:

7  (1) A service employee who holds twelve college hours
8  or comparable credit obtained in a trade or vocational school
9  as approved by the state board;
(2) A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(d) An additional forty dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following:

1. A service employee who holds an associate’s degree;
2. A service employee who holds a bachelor’s degree;
3. A service employee who holds a master’s degree;
4. A service employee who holds a doctorate degree.

(e) An additional eleven dollars per month shall be added to the minimum monthly pay of each service employee for each of the following:

1. A service employee who holds a bachelor’s degree plus fifteen college hours;
2. A service employee who holds a master’s degree plus fifteen college hours;
3. A service employee who holds a master’s degree plus thirty college hours;
4. A service employee who holds a master’s degree plus forty-five college hours; and
5. A service employee who holds a master’s degree plus sixty college hours.

(f) When any part of a school service employee’s daily shift of work is performed between the hours of six o’clock p.m. and five o’clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.
(g) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee’s usual hourly rate.

(h) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(i) No service employee may have his or her daily work schedule changed during the school year without the employee’s written consent and the employee’s required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(j) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee’s daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a
one-half day salary basis shall receive the same hourly extra
duty assignment pay computed as though the employee were
employed on a full-day salary basis.

(k) The minimum pay for any service personnel
employees engaged in the removal of asbestos material or
related duties required for asbestos removal shall be their
regular total daily rate of pay and no less than an additional
three dollars per hour or no less than five dollars per hour for
service personnel supervising asbestos removal
responsibilities for each hour these employees are involved
in asbestos related duties. Related duties required for
asbestos removal include, but are not limited to, travel,
preparation of the work site, removal of asbestos
decontamination of the work site, placing and removal of
equipment and removal of structures from the site. If any
member of an asbestos crew is engaged in asbestos related
duties outside of the employee’s regular employment county,
the daily rate of pay shall be no less than the minimum
amount as established in the employee’s regular employment
county for asbestos removal and an additional thirty dollars
per each day the employee is engaged in asbestos removal
and related duties. The additional pay for asbestos removal
and related duties shall be payable entirely from county
funds. Before service personnel employees may be used in
the removal of asbestos material or related duties, they shall
have completed a federal Environmental Protection Act
approved training program and be licensed. The employer
shall provide all necessary protective equipment and maintain
all records required by the Environmental Protection Act.

(l) For the purpose of qualifying for additional pay as
provided in section eight, article five of this chapter, an aide
shall be considered to be exercising the authority of a
supervisory aide and control over pupils if the aide is required
to supervise, control, direct, monitor, escort or render service
to a child or children when not under the direct supervision of
certified professional personnel within the classroom, library,
hallway, lunchroom, gymnasium, school building, school
grounds or wherever supervision is required. For purposes of
this section, "under the direct supervision of certified
professional personnel" means that certified professional
personnel is present, with and accompanying the aide.

CHAPTER 224

(S.B. 272 - By Senators Kessler, Oliverio, Chafin, Foster, Green,
Hunter, Jenkins, Minard, Stollings, Wells, Barnes, Deem, Hall,
McKenzie and Yoder)

[Passed March 4, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §46A-6F-113 of the Code of West
Virginia, 1931, as amended, relating to definition of
"telemarketing solicitation".

Be it enacted by the Legislature of West Virginia:

That §46A-6F-113 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 6F. TELEMARKETING.

§46A-6F-113. Telemarketer.

(a) "Telemarketer" means any person who initiates or
receives telephone calls to or from a consumer in this state
for the purpose of making a telemarketing solicitation as defined in section one hundred twelve of this article.

(b) A telemarketer may initiate or receive a communication that constitutes a telemarketing solicitation on his own behalf, through a salesperson or through an automated dialing machine.

c) A telemarketer does not include any of the persons or entities exempted pursuant to part II of this article.

d) A telemarketer does not include a salesperson as defined in section one hundred fourteen of this article.

e) A telemarketer includes, but is not limited to, owners, operators, officers, directors, partners or other individuals engaged in the management activities of a business entity that is subject to licensing and registration pursuant to this article.

CHAPTER 225

(Com. Sub. for H.B. 4624 - By Delegates Hutchins and Yost)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §9A-1-10 of the Code of West Virginia, 1931, as amended, relating to describing the powers and duties of the director; providing for the hiring of case managers and counselors; providing for a program to advise veterans of available benefits and services; developing an internet website; and providing an expense per diem for volunteers who drive veterans to hospitals.
Be it enacted by the Legislature of West Virginia:

That §9A-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.


The director is the executive and administrative head of the division and has the power and duty, subject to the provisions of section four of this article, to:

(a) Supervise and put into effect the purposes and provisions of this article and the rules for the government of the division;

(b) Prescribe methods pertaining to investigations and reinvestigations of all claims and to the rights and interests of all veterans, their widows, dependents and orphans;

(c) Prescribe uniform methods of keeping all records and case records of the veterans, their widows, dependents and orphans;

(d) Sign and execute, in the name of the state by West Virginia Division of Veterans' Affairs, and by and with the consent of the Veterans' Council, any contract or agreement with the federal government or its agencies, other states, subdivisions of this state, corporations, associations, partnerships or individuals;

(e) Supervise the fiscal affairs and responsibilities of the division;

*CLERK'S NOTE: This section was also amended by SB 778 (Chapter 226), which passed prior to this act.
(f) Organize the division to comply with the requirements of this article and with the standards required by any federal act or any federal agency;

(g) Establish any regional or area offices throughout the state that are necessary to promote efficiency and economy in administration;

(h) Make reports that comply with the requirements of any federal act or federal agency and the provisions of this article;

(i) Cooperate with the federal and state governments for the more effective attainment of the purposes of this article;

(j) Keep a complete and accurate record of all proceedings; record and file all contracts and agreements and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office and the division;

(k) Prepare for the Veterans' Council the annual reports to the Governor of the condition, operation and functioning of the division;

(l) Exercise any other powers necessary and proper to standardize the work; to expedite the service and business; to assure fair consideration of the rights and interests and claims of veterans, their widows, dependents and orphans; to provide resources for a program which will promote a greater outreach to veterans and which will advise them of the benefits and services that are available, and to promote the efficiency of the division;

(m) Invoke any legal, equitable or special remedies for the enforcement of his or her orders or the provisions of this article;
(n) Appoint the veterans' affairs officers and heads of divisions of the division, and of regional or area offices, and employ assistants and employees, including case managers and counselors, that are necessary for the efficient operation of the division;

(o) Provide resources and assistance in the development of an internet website which is to be used to inform veterans of programs and services available to them through the division and the state and federal governments;

(p) Delegate to all or any of his or her appointees, assistants or employees all powers and duties vested in the director, except the power to sign and execute contracts and agreements, but the director shall be responsible for the acts of his or her appointees, assistants and employees; and

(q) Provide volunteers who will drive or transport veterans to veterans' hospitals from the veteran's home or local veterans' affairs offices and who shall be paid an expense per diem of seventy-five dollars.

CHAPTER 226

(Com. Sub. for S.B. 778 - By Senators Hunter, Wells, Bailey and Boley)

[Passed March 6, 2008; in effect ninety days from passage.] [Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §9A-1-10 of the Code of West Virginia, 1931, as amended, relating to describing the powers and duties of the director; providing for the hiring of case managers and counselors; providing for a program to advise
veterans of available benefits and services; and developing an internet website.

Be it enacted by the Legislature of West Virginia:

That §9A-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.


The director is the executive and administrative head of the division and has the power and duty, subject to the provisions of section four of this article, to:

(a) Supervise and put into effect the purposes and provisions of this article and the rules for the government of the division;

(b) Prescribe methods pertaining to investigations and reinvestigations of all claims and to the rights and interests of all veterans, their widows, dependents and orphans;

(c) Prescribe uniform methods of keeping all records and case records of the veterans, their widows, dependents and orphans;

(d) Sign and execute, in the name of the state by West Virginia Division of Veterans' Affairs, and by and with the consent of the Veterans' Council, any contract or agreement with the federal government or its agencies, other states, subdivisions of this state, corporations, associations, partnerships or individuals;

(e) Supervise the fiscal affairs and responsibilities of the division;

CLERK'S NOTE: This section was also amended by HB 4624 (Chapter 225), which passed subsequent to this act.
(f) Organize the division to comply with the requirements of this article and with the standards required by any federal act or any federal agency;

(g) Establish any regional or area offices throughout the state that are necessary to promote efficiency and economy in administration;

(h) Make reports that comply with the requirements of any federal act or federal agency and the provisions of this article;

(i) Cooperate with the federal and state governments for the more effective attainment of the purposes of this article;

(j) Keep a complete and accurate record of all proceedings; record and file all contracts and agreements and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office and the division;

(k) Prepare for the Veterans' Council the annual reports to the Governor of the condition, operation and functioning of the division;

(l) Exercise any other powers necessary and proper to standardize the work; to expedite the service and business; to assure fair consideration of the rights and interests and claims of veterans, their widows, dependents and orphans; to provide resources for a program which will promote a greater outreach to veterans and which will advise them of the benefits and services that are available, and to promote the efficiency of the division;

(m) Invoke any legal, equitable or special remedies for the enforcement of his or her orders or the provisions of this article;
(n) Appoint the veterans' affairs officers and heads of divisions of the division, and of regional or area offices, and employ assistants and employees, including case managers and counselors, that are necessary for the efficient operation of the division;

(o) Provide resources and assistance in the development of an internet website which is to be used to inform veterans of programs and services available to them through the division and the state and federal governments; and

(p) Delegate to all or any of his or her appointees, assistants or employees all powers and duties vested in the director, except the power to sign and execute contracts and agreements, but the director shall be responsible for the acts of his or her appointees, assistants and employees.

CHAPTER 227

(Com. Sub. for S.B. 505 - By Senators Tomblin, Mr. President, Hunter, Foster, Love, Kessler, Boley, McKenzie, Jenkins, Plymale, Wells, Unger, Minard, Bailey, Sypolt and Edgell)

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9A-1-11a; and to amend and reenact §29-22-9a of said code, all relating to creating the Veterans Cemetery Fund for the construction and operation of veterans’ cemeteries; and authorizing the appropriation of proceeds from the veterans instant lottery scratch-off game to the fund.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §9A-1-11a; and that §29-22-9a of said code be amended and reenacted, all to read as follows:

Chapter
9A. Veterans Affairs.
29. Miscellaneous Boards and Officers.

CHAPTER 9A. VETERANS AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.


There is hereby created in the State Treasury a special revenue fund to be designated and known as the Veterans Cemetery Fund which shall consist of excess revenues derived from the veterans instant lottery scratch-off game as appropriated to the fund by the Legislature and all interest or other returns earned from investment of the fund. Funds may also be derived from any gift, grant, bequest, endowed fund or donation which may be received by any veterans cemetery created by statute from any governmental entity or unit or any person, firm, foundation or corporation. Any balance, including accrued interest or other earnings, in this special fund at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the fund.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.
(a) Beginning the first day of September, two thousand, the commission shall establish an instant lottery scratch-off game designated as the veterans benefit game, which is offered by the lottery.

(b) Notwithstanding the provisions of section eighteen of this article, all net profits received from the sale of veterans benefit game lottery tickets, materials and games are deposited with the State Treasurer into the Veterans Lottery Fund created under subsection (c) of this section. The Legislature may make appropriations from this fund for operational costs from moneys remaining in the Veterans Lottery Fund after the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the foregoing, have been paid. Funds from the Veterans Lottery Fund for the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the construction of a veterans nursing home and/or veterans cemetery, shall be transferred to the Veterans Nursing Home Building Fund and the Veterans Cemetery Fund upon written request of the Director of the Division of Veterans Affairs to the investment management board and the State Treasurer in accordance with the provisions of this section. Once the payment of the principal and interest, any required operational costs and architectural and other project costs associated with construction are paid in full for the construction and operation of the initial veterans skilled nursing facility or veterans cemetery, the Legislature may appropriate from the fund created under this section moneys for the construction, including the architectural fees and other associated costs, equipping and operation of additional skilled nursing facilities and/or cemeteries for veterans of the armed forces of the United States military: Provided, That in addition to the payment of the above-mentioned items, funds may be deposited in the Veterans Cemetery Fund created in section eleven-a, article one, chapter nine-a of this code and,
thereafter, the Legislature may appropriate any excess funds to the General Revenue Fund.

(c) There is hereby created in the State Treasury a special revenue fund designated and known as the Veterans Lottery Fund which shall consist of all revenues derived from the veterans benefit game and any appropriations to the fund by the Legislature and all interest or other returns earned from investment of the fund.

(d) There is hereby created in the State Treasury a special revenue fund designated and known as the Veterans Nursing Home Building Fund which shall consist of all funds for the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the foregoing. Following the selection of the architect, the director shall certify the estimated total cost of the architect and all construction and associated costs to the Joint Committee on Government and Finance prior to the transfer of funds for construction. If funds transferred exceed the estimated costs certified to the joint committee, the director shall certify the additional costs to the joint committee.

(e) There is hereby created in the State Treasury a special revenue fund designated and known as the Veterans Nursing Home Debt Service Fund to which the required funding from the Veterans Nursing Home Building Fund is transferred to refund revenue bonds to pay the principal, interest, redemption premium and coverage ratio requirement, if any, on the revenue bonds issued under the provisions of section seven, article twenty-nine-a, chapter sixteen of this code. The Veterans Nursing Home Debt Service Fund has first priority to all funds in the Veterans Nursing Home Building Fund established herein not otherwise designated or specified by the donor. Beginning on or before the twenty-eighth day of July, two thousand three, and continuing until the twenty-eighth day of June, two thousand thirty-five, the Treasurer shall allocate to the Veterans Nursing Home Debt
Service Fund from the Veterans Nursing Home Building Fund, as a first priority, an amount equal to one tenth of the projected annual principal, interest, redemption premium and coverage ratio requirement on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of July, two thousand three, under the provisions of said section in connection with a veterans nursing home as certified to the Treasurer and the Investment Management Board by the Director of the Division of Veterans Affairs. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Veterans Nursing Home 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.

(f) The commission shall change the design or theme of the veterans benefit game regularly so that the game remains competitive with the other instant lottery scratch-off games offered by the commission. The tickets for the instant lottery game created in this section shall clearly state that the profits derived from the game are being used to benefit veterans in this state.

CHAPTER 228

(S.B. 641 - By Senators Tomblin, Mr. President, Unger, Fanning, Green, Helmick, Hall, Prezioso, Kessler, Minard, Plymale and Hunter)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §22-26-1, §22-26-2, §22-26-3, §22-26-5 and §22-26-6 of the Code of West Virginia, 1931, as
amended; and to amend said code by adding thereto three new sections, designated §22-26-7, §22-26-8 and §22-26-9, all relating to the Water Resources Protection and Management Act; establishing legislative findings; defining certain terms; continuing the water resources survey; continuing mandatory registration of certain water users; requiring reports to the Legislature; requiring development of a state water resources management plan; authorizing surface and groundwater data collection; setting forth powers and duties of the Secretary of the Department of Environmental Protection with regard to development of water resources management plans; establishing criteria for a state water resources management plan; and authorizing development of regional and critical area water resources management plans.

Be it enacted by the Legislature of West Virginia:

That §22-26-1, §22-26-2, §22-26-3, §22-26-5 and §22-26-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §22-26-7, §22-26-8 and §22-26-9, all to read as follows:

ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.

§22-26-1. Short title; legislative findings.
§22-26-2. Definitions.
§22-26-3. Waters claimed by state; water resources protection survey; registration requirements; agency cooperation; information gathering.
§22-26-5. Joint Legislative Oversight Commission on State Water Resources.
§22-26-6. Mandatory survey and registration compliance.
§22-26-7. Secretary authorized to log wells; collect data.
§22-26-9. Regional water resources management plans; critical planning areas.

§22-26-1. Short title; legislative findings.

1 (a) Short title. -- This article may be known and cited as
2 the Water Resources Protection and Management Act.
(b) Legislative findings. --

(1) The West Virginia Legislature finds that it is the public policy of the State of West Virginia to protect and conserve the water resources for the state and to provide for the public welfare. The state’s water resources are vital natural resources of the state that are essential to maintain, preserve and promote quality of life and economic vitality of the state.

(2) The West Virginia Legislature further finds that it is the public policy of the state that the water resources of the state be available for the benefit of the citizens of West Virginia, consistent with and preserving all other existing rights and remedies recognized in common law or by statute, while also preserving the resources within its sovereign powers for the common good.

(3) The West Virginia Legislature further finds that the water use survey conducted by the Department of Environmental Protection is a valuable tool for water resources assessment, protection and management.

(4) The West Virginia Legislature further finds that the water resources of this state have not been fully measured or assessed and that a program to accurately measure and assess the state’s water resources is necessary to protect, conserve and better utilize the water resources of this state.

(5) The West Virginia Legislature further finds that the survey information collected and analyzed by the Department of Environmental Protection has identified the need for a statewide water resources management plan.

(6) The West Virginia Legislature further finds that the development of a state water resources management plan is in the best interest of the state and its citizens and will promote the protection of this valuable natural resource;
promote its use for the public good; and enhance its use and
development for tourism, industry and other economic
development for the benefit of the state and its citizens.

(7) The West Virginia Legislature further finds that
incomplete data collection from an inadequate groundwater
monitoring system continues to hamper efforts to study,
develop and protect the state’s water resources and will be a
major obstacle in the development of a water resources
management plan.

§22-26-2. Definitions.

For purposes of this article, the following words have the
meanings assigned unless the context indicates otherwise:

(a) “Baseline average” means the average amount of
water withdrawn by a large quantity user over a
representative historical time period as defined by the
secretary.

(b) “Beneficial use” means uses that include, but are not
limited to, public or private water supplies, agriculture,
tourism, commercial, industrial, coal, oil and gas and other
mineral extraction, preservation of fish and wildlife habitat,
maintenance of waste assimilation, recreation, navigation and
preservation of cultural values.

(c) “Commercial well” means a well that serves small
businesses and facilities in which water is the prime
ingredient of the service rendered.

(d) “Community water system” means a public water
system that pipes water for human consumption to at least
fifteen service connections used by year-round residents or
one that regularly serves at least twenty-five residents.
(e) “Consumptive withdrawal” means any withdrawal of water which returns less water to the water body than is withdrawn.

(f) “Farm use” means irrigation of any land used for general farming, forage, aquaculture, pasture, orchards, nurseries, the provision of water supply for farm animals, poultry farming or any other activity conducted in the course of a farming operation.

(g) “Industrial well” means a well used in industrial processing, fire protection, washing, packing or manufacturing of a product excluding food and beverages or similar nonpotable uses.

(h) “Interbasin transfer” means the permanent removal of water from the watershed from which it is withdrawn.

(i) “Large quantity user” means any person who withdraws over seven hundred fifty thousand gallons of water in a calendar month from the state’s waters and any person who bottles water for resale regardless of quantity withdrawn.

(j) “Maximum potential” means the maximum designed capacity of a facility to withdraw water under its physical and operational design.

(k) “Noncommunity nontransient water system” means a public water system that serves at least twenty-five of the same persons over six months per year.

(l) “Nonconsumptive withdrawal” means any withdrawal of water which is not a consumptive withdrawal as defined in this section.

(m) “Person”, “persons” or “people” means an individual, public and private business or industry, public or private water service and governmental entity.
"Secretary" means the Secretary of the Department of Environmental Protection or his or her designee.

"Transient water system" means a public water system that serves at least twenty-five transient people at least sixty days a year.

"Test well" means a well that is used to obtain information on groundwater quantity, quality, aquifer characteristics and availability of production water supply for manufacturing, commercial and industrial facilities.

"Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands: Provided, That farm ponds, industrial settling basins and ponds and waste treatment facilities are excluded from the waters of the state.

"Watershed" means a hydrologic unit utilized by the United States Department of Interior's geological survey, adopted in one thousand nine hundred seventy-four, as a framework for detailed water and related land-resources planning.

"Withdrawal" means the removal or capture of water from water resources of the state regardless of whether it is consumptive or nonconsumptive: Provided, That water encountered during coal, oil, gas, water well drilling and initial testing of water wells, or other mineral extraction and diverted, but not used for any purpose and not a factor in low-flow conditions for any surface water or groundwater, is not deemed a withdrawal.
§22-26-3. Waters claimed by state; water resources protection survey; registration requirements; agency cooperation; information gathering.

(a) The waters of the State of West Virginia are hereby claimed as valuable public natural resources held by the state for the use and benefit of its citizens. The state shall manage the quantity of its waters effectively for present and future use and enjoyment and for the protection of the environment. Therefore, it is necessary for the state to determine the nature and extent of its water resources, the quantity of water being withdrawn or otherwise used and the nature of the withdrawals or other uses: Provided, That no provisions of this article may be construed to amend or limit any other rights and remedies created by statute or common law in existence on the date of the enactment of this article.

(b) The secretary shall conduct an ongoing water resources survey of consumptive and nonconsumptive surface water and groundwater withdrawals by large quantity users in this state. The secretary shall determine the form and format of the information submitted, including the use of electronic submissions. The secretary shall establish and maintain a statewide registration program to monitor large quantity users of water resources of this state beginning in two thousand six.

(c) Large quantity users, except those who purchase water from a public or private water utility or other service that is reporting its total withdrawal, shall register with the Department of Environmental Protection and provide all requested survey information regarding withdrawals of the water resources. Multiple withdrawals from state water resources that are made or controlled by a single person and used at one facility or location shall be considered a single withdrawal of water. Water withdrawals for self-supplied farm use and private households will be estimated. Water utilities regulated by the Public Service Commission pursuant
(d) Except as provided in subsection (f) of this section, large quantity users who withdraw water from a West Virginia water resource shall comply with the survey and registration requirements of this article. Registration shall be maintained by every large quantity user by certifying, on forms and in a manner prescribed by the secretary, that the amount withdrawn in the previous calendar year varies by no more than ten percent from the users’ baseline average or by certifying the change in usage.

(e) The secretary shall maintain a listing of all large quantity users and each such user’s baseline average water withdrawal.

(f) The secretary shall make a good faith effort to obtain survey and registration information from persons who are withdrawing water from in-state water resources, but who are located outside the state borders.

(g) All state agencies and local governmental entities that have a regulatory, research, planning or other function relating to water resources, including, but not limited to, the State Geological and Economic Survey, the Division of Natural Resources, the Public Service Commission, the Bureau for Public Health, the Commissioner of the Department of Agriculture, the Division of Homeland Security and Emergency Management, Marshall University, West Virginia University and regional, county and municipal planning authorities may enter into interagency agreements with the secretary and shall cooperate by: (i) Providing information relating to the water resources of the state; (ii) providing any necessary assistance to the secretary in effectuating the purposes of this article; and (iii) assisting in
the development of a state water resources management plan. The secretary shall determine the form and format of the information submitted by these agencies.

(h) Persons required to participate in the survey and registration shall provide any reasonably available information on stream flow conditions that impact withdrawal rates.

(i) Persons required to participate in the survey and registration shall provide the most accurate information available on water withdrawal during seasonal conditions and future potential maximum withdrawals or other information that the secretary determines is necessary for the completion of the survey or registration: Provided, That a coal-fired electric generating facility shall also report the nominal design capacity of the facility, which is the quantity of water withdrawn by the facility’s intake pumps necessary to operate the facility during a calendar day.

(j) The secretary shall, to the extent reliable water withdrawal data is reasonably available from sources other than persons required to provide data and participate in the survey and registration, utilize that data to fulfill the requirements of this section. If the data is not reasonably available to the secretary, persons required to participate in the survey and registration are required to provide the data. Altering locations of intakes and discharge points that result in an impact to the withdrawal of the water resources by an amount of ten percent or more from the consecutive baseline average shall also be reported.

(k) The secretary shall report annually to the Joint Legislative Oversight Commission on State Water Resources on the survey results. The secretary shall make a progress report every three years on the development of the state water resources management plan and any significant changes that
may have occurred since the survey report was submitted in two thousand six.

(l) In addition to any requirements for completion of the survey established by the secretary, the survey must accurately reflect both actual and maximum potential water withdrawal. Actual withdrawal shall be established through metering, measuring or alternative accepted scientific methods to obtain a reasonable estimate or indirect calculation of actual use.

(m) The secretary shall make recommendations to the joint legislative oversight commission created in section five of this article relating to the implementation of a water quantity management strategy for the state or regions of the state where the quantity of water resources are found to be currently stressed or likely to be stressed due to emerging beneficial or other uses, ecological conditions or other factors requiring the development of a strategy for management of these water resources.

(n) The secretary may propose rules pursuant to article three, chapter twenty-nine-a of this code as necessary to implement the survey registration or plan requirements of this article.

(o) The secretary is authorized to enter into cooperative agreements with local, state and federal agencies and private policy or research groups to obtain federal matching funds, conduct research and analyze survey and registration data and other agreements as may be necessary to carry out his or her duties under this article.

§22-26-5. Joint Legislative Oversight Commission on State Water Resources.

(a) The President of the Senate and the Speaker of the House of Delegates shall each designate five members of
their respective houses, at least one of whom shall be a member of the minority party, to serve on a joint legislative oversight commission charged with immediate and ongoing oversight of the water resources survey, registration and development of a state water resources management plan. This commission shall be known as the Joint Legislative Oversight Commission on State Water Resources and shall regularly investigate and monitor all matters relating to the water resources survey and plan.

(b) The expenses of the commission, including the cost of conducting the survey and monitoring any subsequent strategy and those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel, are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

§22-26-6. Mandatory survey and registration compliance.

(a) The water resources survey and subsequent registry will provide critical information for protection of the state’s water resources and, thus, mandatory compliance with the survey and registry is necessary.

(b) All large quantity users who withdraw water from a West Virginia water resource shall complete the survey and register such use with the Department of Environmental Protection. Any person who fails to complete the survey or register, provides false or misleading information on the survey or registration, or fails to provide other information as required by this article may be subject to a civil administrative penalty not to exceed five thousand dollars to be collected by the secretary consistent with the secretary’s authority pursuant to this chapter. Every thirty days after the initial imposition of the civil administrative penalty, another penalty may be assessed if the information is not provided. The secretary shall provide written notice of failure to
comply with this section thirty days prior to assessing the first administrative penalty.

§22-26-7. Secretary authorized to log wells; collect data.

In order to obtain important information about the state’s surface and groundwater, the secretary is authorized to collect scientific data on surface and groundwater and to enter into agreements with local and state agencies, the federal government and private entities to obtain this information.

(1) Any person who installs a community water system, noncommunity nontransient water system, transient water system, commercial well, industrial or test well, shall notify the secretary of his or her intent to drill a water well no less than ten days prior to commencement of drilling. The ten-day notice is the responsibility of the owner, but may be given by the drilling contractor.

(2) The secretary has the authority to gather data, including driller and geologist logs, run electric and other remote-sensing logs and devices and perform physical characteristics tests on nonresidential and multifamily water wells.

(3) The drilling contractor shall submit to the secretary a copy of the well completion forms submitted to the Division of Health for a community water system, noncommunity nontransient water system, transient water system, commercial well, industrial or test well. The drilling contractor shall provide the well GPS location on the well report.

(4) Any person who fails to notify the secretary prior to drilling a well or impedes collection of information by the secretary under this section is in violation of the Water Resources Protection and Management Act and is subject to

(a) The Secretary of the Department of Environmental Protection shall oversee the development of a State Water Resources Management Plan to be completed no later than the thirtieth day of November, two thousand thirteen. The plan shall be reviewed and revised as needed after its initial adoption. The plan shall be developed with the cooperation and involvement of local and state agencies with regulatory, research or other functions relating to water resources including, but not limited to, those agencies and institutions of higher education set forth in section three of this article and a representative of large quantity users. The State Water Resources Management Plan shall be developed utilizing the information obtained pursuant to said section and any other relevant information available to the secretary.

(b) The secretary shall develop definitions for use in the State Water Resources Management Plan for terms that are defined differently by various state and federal governmental entities as well as other terms necessary for implementation of this article.

(c) The secretary shall continue to develop and obtain the following:
(1) An inventory of the surface water resources of each region of this state, including an identification of the boundaries of significant watersheds and an estimate of the safe yield of such sources for consumptive and nonconsumptive uses during periods of normal conditions and drought.

(2) A listing of each consumptive or nonconsumptive withdrawal by a large quantity user, including the amount of water used, location of the water resources, the nature of the use, location of each intake and discharge point by longitude and latitude where available and, if the use involves more than one watershed or basin, the watersheds or basins involved and the amount transferred.

(3) A plan for the development of the infrastructure necessary to identify the groundwater resources of each region of this state, including an identification of aquifers and groundwater basins and an assessment of their safe yield, prime recharge areas, recharge capacity, consumptive limits and relationship to stream base flows.

(4) After consulting with the appropriate state and federal agencies, assess and project the existing and future nonconsumptive use needs of the water resources required to serve areas with important or unique natural, scenic, environmental or recreational values of national, regional, local or statewide significance, including national and state parks; designated wild, scenic and recreational rivers; national and state wildlife refuges; and the habitats of federal and state endangered or threatened species.

(5) Assessment and projection of existing and future consumptive use demands.

(6) Identification of potential problems with water availability or conflicts among water uses and users including, but not limited to, the following:
(A) A discussion of any area of concern regarding historical or current conditions that indicate a low-flow condition or where a drought or flood has occurred or is likely to occur that threatens the beneficial use of the surface water or groundwater in the area; and

(B) Current or potential in-stream or off-stream uses that contribute to or are likely to exacerbate natural low-flow conditions to the detriment of the water resources.

(7) Establish criteria for designation of critical water planning areas comprising any significant hydrologic unit where existing or future demands exceed or threaten to exceed the safe yield of available water resources.

(8) An assessment of the current and future capabilities of public water supply agencies and private water supply companies to provide an adequate quantity and quality of water to their service areas.

(9) An assessment of flood plain and stormwater management problems.

(10) Efforts to improve data collection, reporting and water monitoring where prior reports have found deficiencies.

(11) A process for identifying projects and practices that are being, or have been, implemented by water users that reduce the amount of consumptive use, improve efficiency in water use, provide for reuse and recycling of water, increase the supply or storage of water or preserve or increase groundwater recharge and a recommended process for providing appropriate positive recognition of such projects or practices in actions, programs, policies, projects or management activities.
(12) An assessment of both structural and nonstructural alternatives to address identified water availability problems, adverse impacts on water uses or conflicts between water users, including potential actions to develop additional or alternative supplies, conservation measures and management techniques.

(13) A review and evaluation of statutes, rules, policies and institutional arrangements for the development, conservation, distribution and emergency management of water resources.

(14) A review and evaluation of water resources management alternatives and recommended programs, policies, institutional arrangements, projects and other provisions to meet the water resources needs of each region and of this state.

(15) Proposed methods of implementing various recommended actions, programs, policies, projects or management activities.

(d) The State Water Resources Management Plan shall consider:

(1) The interconnections and relationships between groundwater and surface water as components of a single hydrologic resource.

(2) Regional or watershed water resources needs, objectives and priorities.

(3) Federal, state and interstate water resource policies, plans, objectives and priorities, including those identified in statutes, rules, regulations, compacts, interstate agreements or comprehensive plans adopted by federal and state agencies and compact basin commissions.
(4) The needs and priorities reflected in comprehensive plans and zoning ordinances adopted by a county or municipal government.

(5) The water quantity and quality necessary to support reasonable and beneficial uses.

(6) A balancing and encouragement of multiple uses of water resources, recognizing that all water resources of this state are capable of serving multiple uses and human needs, including multiple uses of water resources for reasonable and beneficial uses.

(7) The distinctions between short-term and long-term conditions, impacts, needs and solutions to ensure appropriate and cost-effective responses to water resources issues.

(8) Application of the principle of equal and uniform treatment of all water users that are similarly situated without regard to established political boundaries.

(e) In November of each year, the secretary shall report to the Joint Legislative Oversight Commission on State Water Resources on the State water Resources Management Plan. The report on the water resources plan shall include benchmarks for achieving the plan’s goals and time frames for meeting them.

(f) Upon adoption of the State Water Resources Management Plan by the Legislature, the report requirements of this article shall be superceded by the plan and subsequent reports shall be on the survey results and the water resources plan. If the plan is not adopted a detailed report discussing the provisions of this section as well as progress reports on the development of the plan shall be submitted every three years.
§22-26-9. Regional water resources management plans; critical planning areas.

(a) As part of the State Water Resources Management Plan, the secretary may designate areas of the state as regional or critical water planning areas for the development of regional or critical area water resources management plans.

(b) The secretary shall establish a timetable for completion of regional and critical area plans which may be developed.

(c) The secretary shall identify all federal and state agencies, county commissions, municipal governments and watershed associations that should be involved in the planning process and any compacts or interstate agreements that may be applicable to the development of a regional or critical area water resource management plan.

(d) The secretary shall establish the minimum requirements for any issues to be addressed by regional and critical area plans within twelve months of the amendment and reenactment of this article during the two thousand eight regular session of the Legislature. The plan requirements and issues to be addressed by regional and critical area plans shall be consistent with the state plan requirements of this article.

(e) The secretary shall establish timetables for the completion of tasks or phases in the development of regional and critical area plans. County commissions and municipal governments may recommend changes in the order in which the tasks and phases must be completed. The secretary shall have final authority to determine the schedule for development of a plan.

(f) Any county or municipal government may enter into an agreement with the secretary to designate a local planning
AN ACT to amend and reenact §5A-3-10a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §23-1-20; to amend said code by adding thereto a new section, designated §23-2-9a; to amend and reenact §23-2C-3, §23-2C-15 and §23-2C-17 of said code; to amend and reenact §23-4-7b of said code; and to amend and reenact §23-5-1 and §23-5-11 of said code, all relating generally to workers’ compensation insurance; prohibiting public contracts with employers in workers’ compensation default; establishing hiring preferences for employees of the Attorney General’s workers’ compensation litigation unit and permitting Division of Personnel to propose rules regarding such preferences; providing for the termination of licenses and permits to self-insured employers in workers’ compensation default; requiring the proposal of rules to regulate certain third-party administrators; requiring proposal of rules relating to establishing penalties for certain defaults; eliminating requirement that private carriers maintain an office in the state;
modifying certain information that must be on posted notice in work place; changing period of notice for cancellation of policies; establishing fixed percentages for determining surcharges on covered employers and permitting recalculation of one such percentage; eliminating certain carrier reporting requirements; changing periods within which private carriers must notify the Insurance Commissioner regarding coverage status; limiting employer protests; increasing the periods in which to file objections to claims decisions; providing for conditional payment of benefits; providing that corrective orders do not nullify pending protests; providing for proposal of rules relating to establishing a trial return to work period for employees; and requiring the Governor to set salaries of members of the Workers’ Compensation Board of Review.

Be it enacted by the Legislature of West Virginia:

That §5A-3-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-1-20; that said code be amended by adding thereto a new section, designated §23-2-9a; that §23-2C-3, §23-2C-15 and §23-2C-17 of said code be amended and reenacted; that §23-4-7b of said code be amended and reenacted; and that §23-5-1 and §23-5-11 of said code be amended and reenacted, all to read as follows:

Chapter
5A. Department of Administration.
23. Workers’ Compensation.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state or its political subdivisions.
(a) Unless the context clearly requires a different meaning, for the purposes of this section, the terms:

(1) “Debt” means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, amounts owed to the Workers' Compensation Funds as defined in article two-c, chapter twenty-three of this code, penalty or other assessment or surcharge presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

(2) “Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions, and includes any person or entity that is in employer default.

(3) “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, article two-c, chapter twenty-three, of this code, failure to maintain mandatory workers’ compensation coverage, or failure to fully meet its obligations as a workers’ compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

(4) “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities.
(5) "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(b) No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and:

   (1) The debt owed is an amount greater than one thousand dollars in the aggregate; or

   (2) The debtor is in employer default.

(c) The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, amount owed to the Workers' Compensation Funds as defined in article two-c, chapter twenty-three of this code, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(d) All bids, contract proposals or contracts with the state or any of its political subdivisions submitted or approved under the provisions of this code shall include an affidavit that the vendor, prospective vendor or a related party to the vendor or prospective vendor is not in employer default and
68 does not owe any debt in an amount in excess of one
dollar or, if a debt is owed, that the provisions of
subsection (c) of this section apply.

Article
2. Employers and Employees Subject to This Chapter; Extraterritorial Coverage.
4. Disability and Death Benefits.
5. Review.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-20. Employment preference for employees in workers’
compensation litigation unit.

1 (a) The Legislature finds that, as claims against the
2 Workers’ Compensation Old Fund continue to decrease,
3 persons currently employed on a permanent basis by the
4 Attorney General in the workers’ compensation litigation unit
5 may soon face layoffs due to the decreasing workload. The
6 Legislature hereby declares that such employees should have
7 certain preferences if they seek continued employment with
8 the state.

9 (b) Notwithstanding any provision of this code to the
10 contrary, any person, not a temporary or probationary
11 employee, employed by the Attorney General in the workers’
12 compensation litigation unit who is laid off as a result of a
13 decreased workload, shall be afforded the opportunity to
14 transfer to other state employment if he or she is an employee
15 in good standing at the time of the layoff.

16 (c) The Attorney General shall establish and maintain, for
17 a period of two years, a list of all employees who are eligible
18 for employment due to a layoffs pursuant to this section, and
19 who wish to remain eligible for employment with the state.
20 The Attorney General shall give priority to any person on the
list for employment in an available position equivalent to the
position that person held in the workers' compensation
litigation unit unless the Attorney General determines that the
person is less qualified than other applicants for the position.

(d) Notwithstanding any other provision of this code to
the contrary, the Division of Personnel shall maintain, for a
period of two years, a list of employees who were laid off as
a result of the reduction in the work force occasioned by the
decreasing work load of the workers' compensation litigation
unit within the office of the Attorney General. Any such
employee shall be given preference in hiring for any position
in classified or exempt service for which he or she is
qualified and applies. The Director of the Division of
Personnel may propose for promulgation, in accordance with
the provisions of article three, chapter twenty-nine-a of this
code, a legislative rule to effectuate the requirements of this
section.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO
THIS CHAPTER; EXTRATERRITORIAL
COVERAGE.

§23-2-9a. Sanctions for default by self-insured employers;
rulemaking authority.

Whenever the authority of an employer to self-insure its
obligations under this chapter is terminated and such
employer is thereafter in default in the payment of any
portion of surcharges or assessments required under this
chapter or by rules promulgated thereunder, or in any
payment required to be made as benefits provided by this
chapter to the employer's injured employees or dependents of
fatally injured employees, such employer shall be ineligible
for government contracts to the same extent as an employer
in "employer default," as provided for in section ten-a, article
three, chapter five-a of this code, and shall also be subject to
the license and permit revocation and termination sanctions
to the same extent as employers in “employer default” pursuant to the provisions of subdivision (1), subsection (e), section nineteen, article two-c of this chapter. The Insurance Commissioner shall propose rules, as provided in section five, article two-c of this chapter, establishing administrative penalties for nonpayment of obligations under this chapter.

ARTICLE 2C. EMPLOYERS’ MUTUAL INSURANCE COMPANY.


§23-2C-17. Administration of a competitive system.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

(a) (1) 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:

(A) Insure employers against liability for injuries and occupational diseases for which their employees may be entitled to receive compensation pursuant to this chapter and federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901, et seq.;

(B) Provide employer's liability insurance incidental to and provided in connection with the insurance specified in paragraph (A) of this subdivision, including coal-workers’ pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and

(C) Transact other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.
(2) The company may 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 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 the commissioner, in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall 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 the Insurance Commissioner determines are 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 the deadline is extended by the Insurance Commissioner.

(c) For the duration of its existence, the company is not a department, unit, agency or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, are 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 part of the General Revenue Fund of the state. The debts, claims, obligations and liabilities of the company are not 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 article two, chapter six-c 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; or the provisions of chapter twelve of this code.

(f) If the commission has been terminated, effective upon the termination, private carriers, including the company, are not subject to payment of premium taxes, surcharges and credits contained in article three, chapter thirty-three of this
86 code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:

89 (1) (A) 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 days of receipt of premium payments;

91 (B) With respect to fiscal years beginning on and after the first day of July, two thousand eight, in lieu of the surcharge set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount of five and five-tenths percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied: Provided, That prior to the thirtieth day of June, two-thousand thirteen, and every five years thereafter, the commissioner shall review the percentage surcharge and determine a new percentage as he or she deems necessary.

96 (C) The amounts required to be collected under paragraph (B) of this subdivision shall be remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before the first day of March of the succeeding year.

99 (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 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) (A) Each private carrier shall collect a premiums surcharge from its policyholders 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: Provided, That the surcharge rate on policies issued or renewed on or after the first day of July, two thousand eight shall be nine percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied.

(B) 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 Industrial Council. The amount collected pursuant to this subdivision 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 paragraphs (A) and (B), subdivision (3), subsection (f) of this section sunset and are not 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 of this chapter have been retired and that the unfunded liability of the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.


(a) Effective upon termination of the commission, all subscriber policies with the commission shall novate to the company and all employers 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. Each employer purchasing workers' compensation insurance from the company have the right to designate a representative or agent to act on its behalf in any and all matters relevant to coverage and claims 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 are 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 is 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 name, business address and telephone number of the insurer and of the person to contact with questions about a claim. The employer shall at all times maintain the notice provided for the information of his or her employees. Release of employer policy information and status by the Industrial Council and the Insurance Commissioner shall be governed by section four, article one of this chapter.

(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 the employer.

(e) Effective the first day of January, two thousand nine, the company may decline to offer coverage to any applicant. Private carriers and, effective the first day of January, two thousand nine, the company, may cancel a policy upon the issuance of thirty days' written advance notice to the policyholder and may refuse 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 or for refusal to comply with a premium audit
is effective after ten days advance written notice of
cancellation to the policyholder.

(f) Every private carrier shall notify the Insurance
Commissioner as follows: (1) Of the issuance or renewal of
insurance coverage, within thirty days of (A) the effective
date of coverage, or (B) the private carrier’s receipt of notice
of the employer’s operations in this state, whichever is later;
(2) of a termination of coverage by the private carrier due to
refusal to renew or cancellation, at least ten days prior to the
effective date of the termination; and (3) of a termination of
coverage by an employer, within ten days of the private
carrier’s receipt of the employer’s request for such
termination; the notifications shall be on forms developed or
in a manner prescribed by the Insurance Commissioner.

(g) For the purposes of subsections (e) and (f) of this
section, the transfer of a policyholder between insurance
companies within the same group is not considered a
cancellation or refusal to renew a workers’ compensation
insurance policy.

§23-2C-17. Administration of a competitive system.

(a) Every policy of insurance issued by a private carrier:

(1) Shall be in writing;

(2) Shall contain the insuring agreements and exclusions;
and

(3) If it contains a provision inconsistent with this
chapter, it shall be deemed to be reformed to conform with
this chapter.
(b) The Industrial Council shall promulgate a rule which prescribes the requirements of a basic policy to be used by private carriers.

(c) A private carrier or self-insured employer may enter into a contract to have its plan of insurance administered by a third-party administrator if the administrator is licensed or registered with the Insurance Commissioner in accordance with article forty-six, chapter thirty-three of the code. Notwithstanding any other provision of this code to the contrary, any third-party administrator who, directly or indirectly, underwrites or collects charges or premiums from, or adjusts or settles claims on residents of this state, in connection with workers’ compensation coverage offered or provided by an insurer, is subject to the provisions of article forty-six, chapter thirty-three of this code to the same extent as those persons included in the definition set forth in subsection (a), section two of said article. The Insurance Commissioner shall propose rules, as provided in section five, article two-c of this chapter, to regulate the use of third-party administrators by private carriers and self-insured employers, including rules setting forth mandatory provisions for agreements between third-party administrators and self-insured employers or private carriers.

(d) A self-insured employer or a private carrier may:

(1) Enter into a contract or contracts with one or more organizations for managed care to provide comprehensive medical and health care services to employees for injuries and diseases that are compensable pursuant to chapter twenty-three of this code. The managed care plan must be approved pursuant to the provisions of section three, article four of this chapter.

(2) Require employees to obtain medical and health care services for their industrial injuries from those organizations and persons with whom the self-insured employer, or private
carrier has contracted or as the self-insured employer or private carrier otherwise prescribes.

(3) Except for emergency care, require employees to obtain the approval of the self-insured employer or private carrier before obtaining medical and health care services for their industrial injuries from a provider of health care who has not been previously approved by the self-insured employer or private carrier.

(e) A private carrier or self-insured employer may inquire about and request medical records of an injured employee that concern a preexisting medical condition that is reasonably related to the industrial injury of that injured employee.

(f) An injured employee must sign all medical releases necessary for the insurer of his or her employer to obtain information and records about a preexisting medical condition that is reasonably related to the industrial injury of the employee and that will assist the insurer to determine the nature and amount of workers’ compensation to which the employee is entitled.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-7b. Trial return to work; Insurance Commissioner to develop rules.

(a) The Legislature hereby finds and declares that it is in the interest of employees and employers that injured employees be encouraged to return to work as quickly as possible after an injury and that appropriate protections be afforded to injured employees who return to work on a trial basis.

(b) The Insurance Commissioner shall propose rules, as provided in section five, article two-c of this chapter,
9 establishing criteria for providing employers the option of
10 allowing employees, following an injury, to return to work on
11 a trial basis and for the suspension of temporary total benefits
12 during a period of trial return to work.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on
claims; objections and hearing.


§23-5-1. Notice by commission or self-insured employer of
decision; procedures on claims; objections and
hearing.

(a) The Insurance Commissioner, private carriers and
self-insured employers may determine all questions within
their jurisdiction. In matters arising under articles three and
four of this chapter, the Insurance Commissioner private
carriers and self-insured employers shall promptly review
and investigate all claims. The parties to a claim are the
claimant and, if applicable, the claimant’s dependants, and
the employer, and with respect to claims involving funds
created in article two-c of this chapter for which he or she has
been designated the administrator, the Insurance
Commissioner. In claims in which the employer had
coverage on the date of the injury or last exposure, the
employer’s carrier has sole authority to act on the employer’s
behalf in all aspects related to litigation of the claim. With
regard to any issue which is ready for a decision, the
Insurance Commissioner, private carrier or self-insured
employer, whichever is applicable, shall promptly send the
decision to all parties, including the basis of its decision. As
soon as practicable after receipt of the claim, but in no event
later than the date of the initial decision on the claim, the
Insurance Commissioner, private carrier or self-insured
employer, whichever is applicable, shall send the claimant a
brochure approved by the Insurance Commissioner setting
forth the claims process.
(b)(1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award or upon making any modification or change with respect to former findings or orders, as provided by section sixteen, article four of this chapter, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for filing a protest to the finding. The action of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, is final unless the decision is protested within sixty days after the receipt of such decision, unless a protest is filed within the sixty-day period, the finding or action is final. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. Any protest shall be filed with the Office of Judges with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in sections eight and nine of this article. An employer may protest decisions incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in article two-c of this chapter, or decisions entered pursuant to subdivision (1), subsection (c), section seven-a, article four of this chapter.

(2)(A) With respect to every application for benefits filed on or after the first day of July, two thousand eight, in which a decision to deny benefits is protested and the only controversy relating to compensability is whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the office of judges that another identifiable person may be liable. The office of judges shall promptly order the appropriate persons be joined as parties to the proceeding: Provided, That at any time during a proceeding in which conditional payments are being made in
accordance with the provisions of this subsection, the office of judges may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the administrative law judge has made a determination as to the party properly liable for payment of the claim, he or she shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers and self-insured employers as is necessary.

(C) The office of judges may direct that:

(i) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(ii) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(iii) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer or Insurance Commissioner.

(c) Where an employer protests a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in article two-c of this chapter, or decisions entered pursuant to subdivision (1), subsection (c), section seven-a, article four of this chapter, and the employer does not prevail in its protest, and in the event the claimant is required to attend a hearing by subpoena or agreement of counsel or at the
express direction of the office of judges, then the claimant in
addition to reasonable traveling and other expenses shall be
reimbursed for loss of wages incurred by the claimant in
attending the hearing.

(d) The Insurance Commissioner, private carrier or
self-insured employer, whichever is applicable may amend,
correct or set aside any order or decision on any issue entered
by it which, at the time of issuance or any time after that, is
discovered to be defective or clearly erroneous or the result
of mistake, clerical error or fraud, or with respect to any
order or decision denying benefits, otherwise not supported
by the evidence, but any protest filed prior to entry of the
amended decision is a protest from the amended decision
unless and until the administrative law judge before whom
the matter is pending enters an order dismissing the protest as
moot in light of the amendment. Jurisdiction to issue an
amended decision pursuant to this subsection continues until
the expiration of two years from the date of a decision to
which the amendment is made unless the decision is sooner
affected by an action of an administrative law judge or other
judicial officer or body: Provided, That corrective actions in
the case of fraud may be taken at any time.


(a) On the thirty-first day of January, two thousand four,
the Workers' Compensation Appeal Board heretofore
established in this section is hereby abolished.

(b) There is created the “Workers' Compensation Board
of Review”, which may also be referred to as “the Board of
Review” or “the board”. Effective the first day of February,
two thousand four, the Board of Review shall exercise
exclusive jurisdiction over all appeals from the Workers'
Compensation Office of Judges including any and all appeals
pending with the Board of Appeals on the thirty-first day of
January, two thousand four.
(c) The board consists of three members.

(d) The Governor shall appoint, from names submitted by the “Workers' Compensation Board of Review Nominating Committee”, with the advice and consent of the Senate, three qualified attorneys to serve as members of the Board of Review. If the Governor does not select a nominee for any vacant position from the names provided by the nominating committee, he shall notify the nominating committee of that circumstance and the committee shall provide additional names for consideration by the Governor. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only after notice and opportunity to respond and present evidence. No more than two of the members of the board may be of the same political party. The members of the Board of Review shall be paid an annual salary of eighty-five thousand dollars: Provided, That on and after the first day of July, two thousand eight the Governor shall set the salary of the members of the board: Provided, however, That the annual salary of a member of the Board of Review shall not exceed one hundred ten thousand dollars. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(e) The nominating committee consists of the following members: (1) The President of the West Virginia State Bar who serves as the chairperson of the committee; (2) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the major trade association representing employers in this state; (3) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the highest ranking officer of the major employee organization representing
(f) The nominating committee is responsible for reviewing and evaluating candidates for possible appointment to the Board of Review by the Governor. In reviewing candidates, the nominating committee may accept comments from and request information from any person or source.

(g) Each member of the nominating committee may submit up to three names of qualified candidates for each position on the Board of Review: Provided, That the member of the nominating committee selected by the major trade organization representing employers of this state shall submit at least one name of a qualified candidate for each position on the board who either is, or who represents, small business employers of this state. After careful review of the candidates, the committee shall select a minimum of one candidate for each position on the board.

(h) Of the initial appointments, one member shall be appointed for a term ending the thirty-first day of December, two thousand six; one member shall be appointed for a term ending the thirty-first day of December, two thousand eight; and one member shall be appointed for a term ending the thirty-first day of December, two thousand ten. Thereafter, the appointments shall be for six-year terms.

(i) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of ten years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on
the basis of the record of those hearings before administrative agencies, regulatory bodies or courts of record at the federal, state or local level.

(j) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(k) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(l) The board shall designate one of its members in rotation to be chairman of the board for as long as the board may determine by order made and entered of record. In the absence of the chairman, any other member designated by the members present shall act as chairman.

(m) The Board of Review shall meet as often as necessary to hold review hearings, at such times and places as the chairman may determine. Two members shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority of the members of the board.

(n) The Board of Review shall make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice and procedure to be used by the board.

(o) The Board of Review may hire a clerk and other professional and clerical staff necessary to carry out the
requirements of this article. It is the duty of the clerk of the
Board of Review to attend in person, or by deputy, all the
sessions of the board, to obey its orders and directions, to
take care of and preserve in an office, kept for the purpose,
all records and papers of the board and to perform other
duties as prescribed by law or required of him or her by the
board. All employees of the board serve at the will and
pleasure of the board. The board's employees are exempt
from the salary schedule or pay plan adopted by the Division
of Personnel. All personnel of the Board of Review are
under the supervision of the chairman of the Board of
Review.

(p) If considered necessary by the board, the board may,
through staffing or other resources, procure assistance in
review of medical portions of decisions.

(q) Upon the conclusion of any hearing, or prior thereto
with concurrence of the parties, the board shall promptly
determine the matter and make an award in accordance with
its determination.

(r) The award shall become a part of the commission file.
A copy of the award shall be sent forthwith by mail to all
parties in interest.

(s) The award is final when entered. The award shall
contain a statement explaining the rights of the parties to an
appeal to the Board of Review and the applicable time
limitations involved.

(t) The board shall submit to the Insurance Commissioner
a budget sufficient to adequately provide for the
administrative and other operating expenses of the board.

(u) The board shall report monthly to the Industrial
Council on the status of all claims on appeal.
(Com. Sub. for S.B. 571 - By Senators Jenkins, Plymale, Deem, Minard, Green, Hall, Hunter, Foster, Kessler, Stollings and Yoder)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to creating a rebuttable presumption that cardiovascular injury, disease or death or pulmonary disease or death of a professional firefighter is an occupational injury if certain criteria are met; providing that sufficient notice of occupational injury, disease or death has been provided under such circumstances; establishing presumption that death or injury was not self inflicted; and requiring the Insurance Commissioner conduct a study and report back to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §23-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.
§23-4-1. To whom compensation fund disbursed; occupational
pneumoconiosis and other occupational diseases
included in “injury” and “personal injury”; definition of occupational pneumoconiosis and other
occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary
disease for firefighters.

(a) Subject to the provisions and limitations elsewhere in
this chapter, workers’ compensation benefits shall be paid the
Workers’ Compensation Fund, to the employees of
employers subject to this chapter who have received personal
injuries in the course of and resulting from their covered
employment or to the dependents, if any, of the employees in
case death has ensued, according to the provisions hereinafter
made: Provided, That in the case of any employees of the
state and its political subdivisions, including: Counties;
municipalities; cities; towns; 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 agency or
organization established by the Department of Mental Health
for the provision of community health or mental retardation
services and which is supported, in whole or in part, by state,
county or municipal funds; board, agency, commission,
department or spending unit, including any agency created by
rule of the Supreme Court of Appeals, who have received
personal injuries in the course of and resulting from their
covered employment, the employees are ineligible to receive
compensation while the employees are at the same time and
for the same reason drawing sick leave benefits. The state
employees may only use sick leave for nonjob-related
absences consistent with sick leave use and may draw
workers’ compensation benefits only where there is a job-
related injury. This proviso shall not apply to permanent
benefits: Provided, however, That the employees may collect
sick leave benefits until receiving temporary total disability
benefits. The Division of Personnel shall promulgate rules
pursuant to article three, chapter twenty-nine-a of this code
relating to use of sick leave benefits by employees receiving
personal injuries in the course of and resulting from covered
employment: Provided further, That in the event an
employee is injured in the course of and resulting from
covered employment and the injury results in lost time from
work and the employee for whatever reason uses or obtains
sick leave benefits and subsequently receives temporary total
disability benefits for the same time period, the employee
may be restored sick leave time taken by him or her as a
result of the compensable injury by paying to his or her
employer the temporary total disability benefits received or
an amount equal to the temporary total disability benefits
received. The employee shall be restored sick leave time on
a day-for-day basis which corresponds to temporary total
disability benefits paid to the employer: And provided
further, That since the intent of this subsection is to prevent
an employee of the state or any of its political subdivisions
from collecting both temporary total disability benefits and
sick leave benefits for the same time period, nothing in this
subsection prevents an employee of the state or any of its
political subdivisions from electing to receive either sick
leave benefits or temporary total disability benefits, but not
both.

(b) For the purposes of this chapter, the terms “injury”
and “personal injury” include occupational pneumoconiosis
and any other occupational disease, as hereinafter defined,
and workers’ compensation benefits shall be paid to the
employees of the employers in whose employment the
employees have been exposed to the hazards of occupational
pneumoconiosis or other occupational disease and in this
state have contracted occupational pneumoconiosis or other
occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting from the disease, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the State of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to such hazards, or for any five of the fifteen years immediately preceding the date of his or her last exposure.

An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as sixty days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.

(c) For the purposes of this chapter, disability or death resulting from occupational pneumoconiosis, as defined in subsection (d) of this section, shall be treated and compensated as an injury by accident.

(d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term “occupational pneumoconiosis” includes, but is not limited to, such diseases as silicosis, anthracosilicosis, coal worker’s pneumoconiosis, commonly known as black lung or miner’s asthma, silico-tuberculosis (silicosis accompanied by active
tuberculosis of the lungs), coal worker’s pneumoconiosis
accompanied by active tuberculosis of the lungs, asbestosis,
siderosis, anthrax and any and all other dust diseases of the
lungs and conditions and diseases caused by occupational
pneumoconiosis which are not specifically designated in this
section meeting the definition of occupational
pneumoconiosis set forth in this subsection.

(e) In determining the presence of occupational
pneumoconiosis, X-ray evidence may be considered, but
shall not be accorded greater weight than any other type of
evidence demonstrating occupational pneumoconiosis.

(f) For the purposes of this chapter, occupational disease
means a disease incurred in the course of and resulting from
employment. No ordinary disease of life to which the
general public is exposed outside of the employment is
compensable except when it follows as an incident of
occupational disease as defined in this chapter. Except in the
case of occupational pneumoconiosis, a disease shall be
considered to have been incurred in the course of or to have
resulted from the employment only if it is apparent to the
rational mind, upon consideration of all the circumstances:
(1) That there is a direct causal connection between the
conditions under which work is performed and the
occupational disease; (2) that it can be seen to have followed
as a natural incident of the work as a result of the exposure
occasioned by the nature of the employment; (3) that it can
be fairly traced to the employment as the proximate cause;
(4) that it does not come from a hazard to which workmen
would have been equally exposed outside of the employment;
(5) that it is incidental to the character of the business and not
independent of the relation of employer and employee; and
(6) that it appears to have had its origin in a risk connected
with the employment and to have flowed from that source as
a natural consequence, though it need not have been foreseen
or expected before its contraction: *Provided*, That compensation shall not be payable for an occupational disease or death resulting from the disease unless the employee has been exposed to the hazards of the disease in the State of West Virginia over a continuous period that is determined to be sufficient, by rule of the board of managers, for the disease to have occurred in the course of and resulting from the employee’s employment. An application for benefits on account of an occupational disease shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed. The allocation shall be based upon the time and degree of exposure with each employer.

(g) No award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be considered to have contracted an occupational disease within the meaning of this subsection if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

(h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury has received an injury or contracted a disease arising out of and in the course of his or her employment exists if: (i) The person has been actively employed by a fire department as a professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary disease or death; and (ii) the injury or onset of the disease or death occurred within six months of having participated in firefighting or a training or drill exercise which actually involved firefighting.
When the above conditions are met, it shall be presumed that sufficient notice of the injury, disease or death has been given and that the injury, disease or death was not self inflicted.

(2) The Insurance Commissioner shall study the effects of the rebuttable presumptions created in this subsection on the premiums charged for workers' compensation for professional municipal firefighters; the probable effects of extending these presumptions to volunteer firefighters; and the overall impact of the risk management programs, wage replacement, premium calculation, the number of hours worked per volunteer, treatment of nonactive or "social" members of a volunteer crew and the feasibility of combining various volunteer departments under a single policy on the availability and cost of providing workers' compensation coverage to volunteer firefighters. The Insurance Commissioner shall file the report with the Joint Committee on Government and Finance no later than the first day of December, two thousand eight.

(i) Claims for occupational disease as defined in subsection (f) of this section, except occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury and disease for professional firefighters, shall be processed in like manner as claims for all other personal injuries.

(j) On or before the first day of January, two thousand four, the Workers' Compensation Commission shall adopt standards for the evaluation of claimants and the determination of a claimant's degree of whole-body medical impairment in claims of carpal tunnel syndrome.
AN ACT to amend and reenact §8A-7-7, §8A-7-8 and §8A-7-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8A-7-8a, all relating to zoning ordinances; reducing the threshold for triggering a zoning ordinance election by petition; setting forth procedures for amending a zoning ordinance; requirements for adopting an amendment to a zoning ordinance; requiring specific notice requirements to affected owners of affected parcels when a proposed zoning ordinance modification would change the zoning classification of a parcel of land; clarifying the relevant notice and adoption procedures as they pertain to adoption or modification of a nontraditional zoning ordinance.

Be it enacted by the Legislature of West Virginia:

That §8A-7-7, §8A-7-8 and §8A-7-13 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 §8A-7-8a, all to read as follows:

ARTICLE 7. ZONING ORDINANCE.

§8A-7-7. Election on a zoning ordinance.
§8A-7-8. Amendments to the zoning ordinance by the governing body.
§8A-7-7. Election on a zoning ordinance.

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election, general election or special election, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body’s jurisdiction.

(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within ninety days after the enactment of a zoning ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least ten percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:
(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the zoning ordinance to the voters again at the next primary or general election.

§8A-7-8. Amendments to the zoning ordinance by the governing body.

(a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

(b) When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment if there is not an election, or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:

(1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and
(2) Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

§8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.

(a) After the enactment of the zoning ordinance, the governing body of the municipality may amend the zoning ordinance in accordance with section eight of this article, without holding an election.

(b) After the enactment of the zoning ordinance, the governing body of the county may amend the zoning ordinance in accordance with section eight of this article, as follows:

(1) Without holding an election;

(2) Holding an election on the proposed amendment; or

(3) Holding an election on the proposed amendment pursuant to a petition.

(c) If the governing body of the county chooses to hold an election on the proposed amendment, then it must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code; and
(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary, general or special election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(d) The governing body of a county must hold an election on an amendment to a zoning ordinance if a petition, signed by at least ten percent of the eligible voters in the area to which the zoning ordinance applies, is filed:

(1) With the governing body of the county prior to enactment of an amendment to a zoning ordinance; or

(2) After the enactment of an amendment to a zoning ordinance without an election, if the petition for an election on the amendment to a zoning ordinance is filed with the governing body of the county within ninety days.

(e) The governing body of the county holding an election on the proposed amendment pursuant to a petition must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at
any primary, general or special election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(f) If an election is held, then the proposed amendment to the zoning ordinance does not take effect until a majority of the voters approve it.

(g) If an election is held and the proposed amendment to the zoning ordinance is rejected, then the proposed amendment does not take effect. The governing body of the county may resubmit the proposed amendment to the zoning ordinance to the voters at another election.

(h) A special election may be held upon written request to the governing body of the county.

(i) The election laws of this state apply to any election on a proposed amendment to a zoning ordinance.


(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance
with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least ten percent of the total eligible voters in the affected area may petition the governing body to replace the nontraditional zoning ordinance with a zoning ordinance. The petition must include:

(1) The governing body’s name to which the petition is addressed;

(2) The reason for the petition, including:

(A) Replacing the nontraditional zoning ordinance with a zoning ordinance; and

(B) That the question of replacing the nontraditional zoning ordinance with a new zoning ordinance be put to the voters of the affected area; and

(3) Signatures in ink or permanent marker.

(c) Each person signing the petition must be a registered voter in the affected area and in the governing body’s jurisdiction. The petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.

(d) Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next special, primary or general election ballot.

Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance,
as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(e) The ballots for an election on replacing a zoning ordinance shall have the following:

"Shall _________ (name of governing body) replace _________ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance? ___ Yes ___ No"

(f) Upon a majority vote of the voters voting in favor of replacing a nontraditional zoning ordinance with a zoning ordinance, the governing body shall immediately begin the process of adopting and enacting a zoning ordinance, in accordance with the provisions of chapter eight-a of this code. The governing body has a maximum of three years from the date of the election to adopt a zoning ordinance.

(g) The governing body may amend its nontraditional zoning ordinance during the process of adopting and enacting a zoning ordinance.

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.

(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

(j) If a governing body of a county chooses to replace a nontraditional zoning ordinance with a traditional zoning ordinance without holding an election, a petition, signed by at least ten percent of the eligible voters who reside in the
area affected by the zoning ordinance, for an election on the
question of adopting a traditional zoning ordinance may be
filed with the governing body of the county within ninety
days after the enactment of the traditional zoning ordinance
by the governing body of the county. If a petition is timely
filed, then the traditional zoning ordinance does not take
effect until:

(1) Notice of the election and the zoning ordinance is
published in a local newspaper of general circulation in the
area affected by the zoning ordinance, as a Class II-0 legal
advertisement, in accordance with the provisions of article
three, chapter fifty-nine of this code;

(2) An election is held; and

(3) A majority of the voters approve it.

CHAPTER 232

(Com. Sub. for S.B. 740 - By Senator Unger)

[Passed March 7, 2008; in effect from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to reform the county commission of Berkeley County
under the provisions of section thirteen, article IX of the
Constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:
BERKELEY COUNTY COMMISSION.

§1. Legislative findings.

(a) The Legislature finds that:

(1) The county commission of Berkeley County submitted a resolution requesting reformation of the county commission pursuant to section thirteen, article IX of the West Virginia Constitution;

(2) Berkeley County has experienced growth which has caused the business before the commission to dramatically increase; and

(3) Because of this growth, the citizens of the county feel consideration of the county’s business should be shared among a greater number of elected officials.

(b) Therefore, the Legislature declares that pursuant to the request in the resolution, Berkeley County is authorized to place before the voters of Berkeley County the question of a new tribunal consisting of five members, which tribunal shall be called the Berkeley County Council.

§2. Submission to voters of question of reformation of the county commission; publication.

(a) At the general election held on the fourth day of November, two thousand eight, the question of the reformation of the county commission of Berkeley County, as provided in this act, shall be submitted to the voters of Berkeley County on a ballot furnished by the county commission, in the following form:
“For increasing the county commission to five members and renaming the commission the Berkeley County Council.”

“Against increasing the county commission to five members and renaming the commission the Berkeley County Council.”

(b) Notice of the election on the question shall be given by publication of this act in each weekly or daily newspaper as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code in the county at least once in each week for two successive weeks immediately preceding the election.

§3. Election of Berkeley County Council members.

(a) At the primary election to be held in the year two thousand ten, persons shall be nominated as members of the Berkeley County Council. The election of the three new council members will be held at the general election scheduled for the first Tuesday in November, two thousand ten.

(b) The three new council members shall be elected for staggered terms of two, four and six years respectively. The terms of the newly elected council members will be decided as follows:

(1) The six-year term to the newly elected member who received the greatest number of votes;

(2) The four-year term to the newly elected member who received the second greatest number of votes; and
(3) The two-year term to the newly elected member who received the third greatest number of votes.

(c) The other two members of the council shall be those members of the Berkeley County Commission whose terms will not have ended by the first day of January, two thousand eleven. These two members shall serve until their original commission terms expire.

(d) After the initial term, each council member serves a six-year term.

(e) No two members of the council shall be from the same magisterial district and all members shall be elected from the county at large.

(f) The new council shall become effective and the members shall take office on the first day of January, two thousand eleven.


(a) The new Berkeley County Council has the same powers, duties and responsibilities as a county commission, as provided in the constitution and the general laws of this state.

(b) A majority of the members of the council constitutes a quorum.

§5. Elections.

The elections set forth in this act shall conform in all respects to the election laws and rules administered by the West Virginia Secretary of State.
CHAPTER 233

(Com. Sub. for S.B. 579 - By Senator Caruth)

[Passed March 3, 2008; in effect from passage.]
[Approved by the Governor on March 10, 2008.]

AN ACT to authorize the governing body of the city of Bluefield to appoint two additional nonresident members to the Bluefield Sanitary Board.

Be it enacted by the Legislature of West Virginia:

BLUEFIELD SANITARY BOARD.

§1. Legislative findings.

(a) The Legislature finds that:

(1) The city of Bluefield is in a unique situation in that the state line separates the city from the town of Bluefield, Virginia;

(2) The sanitary sewer system serves both the city of Bluefield, West Virginia, and the town of Bluefield, Virginia;

(3) Part of the sanitary sewer system serving the city of Bluefield, West Virginia, and the town of Bluefield, Virginia, is located in the town of Bluefield, Virginia;
(4) The sanitary board that supervises and controls the sanitary sewer system serving the city of Bluefield, West Virginia and the town of Bluefield, Virginia, was organized by the city of Bluefield, West Virginia, that the two appointed board members are residents of the city of Bluefield, West Virginia; and

(5) Residents of the town of Bluefield, Virginia, have no representation in the decisions concerning the sanitary sewer system affecting their town.

(b) Therefore, the Legislature declares that since the city of Bluefield is in a unique situation, it is in the public interest that the governing body of the city of Bluefield, West Virginia, be authorized to confirm and appoint two additional nonresident members from the town of Bluefield, Virginia, to the Bluefield Sanitary Board.

§2. Authorizing appointment of nonresident board members.

(a) The governing body of the town of Bluefield, Virginia, is authorized to nominate two additional nonresident members to the city of Bluefield Sanitary Board.

(b) The two additional nonresident members shall be residents of the town of Bluefield, Virginia.

(c) Upon the governing body of the city of Bluefield confirming the nominations, the two additional nonresident members shall serve in accordance with section eighteen, article three, chapter sixteen of the Code of West Virginia.

(d) Upon the appointment and confirmation of the said two additional nonresident members, the Bluefield Sanitary Board shall be comprised of the following:
(1) Two residents of the city of Bluefield, West Virginia;
(2) Two residents of the town of Bluefield, Virginia; and
(3) The mayor or city manager of the city of Bluefield, West Virginia.

CHAPTER 234

(Com. Sub. for S.B. 224 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to authorize the county commission of Jefferson County to create a joint emergency services agency; legislative findings; and management by a joint emergency services board.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY JOINT EMERGENCY SERVICES AGENCY.

§1. Legislative findings.

(a) The Legislature finds that:

(1) Jefferson County has a demonstrated population growth rate history;
(2) Small separate volunteer emergency services agencies cannot adequately serve the people of Jefferson County;

(3) The municipalities, communities and the county cannot separately finance individual volunteer emergency services agencies;

(4) Jefferson County is in a unique position that it has the only national historical park in the state which attracts thousands of visitors annually;

(5) The national historical park with its historical buildings and visitors places an undue burden on the small individual emergency services agencies in Jefferson County;

and

(6) An agency that combines joint emergency services would enhance Jefferson County’s ability to serve its people.

Therefore, the Legislature declares that since Jefferson County is in a unique situation, it is in the public interest that the county commission of Jefferson County be authorized to create a joint emergency services agency.

§2. Authorizing creation of the Jefferson County Joint Emergency Services Agency.

(a) In lieu of creating both an emergency ambulance service authority and a separate county fire association or county fire board, the county commission of Jefferson County may enact an ordinance creating a combined joint emergency services agency to provide emergency services and emergency response services.

(b) The agency shall possess all of the rights and responsibilities conferred upon emergency ambulance service
§3. Joint Emergency Services Board.

(a) By ordinance, the county commission of Jefferson County may create a Joint Emergency Services Board to oversee the management and control of the agency.

(b) The board shall consist of at least the following individuals who shall be appointed by the county commission:

(1) A representative from an emergency medical service;

(2) A representative from a fire protection service; and

(3) A citizen member who is not employed with an emergency medical service, a fire protection service or the county commission.

(c) All board members shall be residents of Jefferson County.

(d) The board members shall serve for staggered terms of three years and are limited to two consecutive terms. In the event of a vacancy, a successor shall be appointed from the same service area as the unexpired representative’s term. Members shall continue to serve until their successors have been appointed.

(e) A majority of the members of the board constitutes a quorum.
AN ACT to amend and reenact §55-17-1 and §55-17-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §55-17-6, all relating to requiring notice to certain public officials upon commencement of actions on behalf of the state or a government agency thereof; requiring notice prior to settlement of such actions; requiring notice of potential recovery through seizure or forfeiture of assets in certain criminal cases; and providing for statutory construction of the article.

Be it enacted by the Legislature of West Virginia:

That §55-17-1 and §55-17-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §55-17-6, all to read as follows:
ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS ON BEHALF OF OR AGAINST THE STATE.

§55-17-1. Findings; purpose.
§55-17-5. Notice of settlement, seizure or forfeiture.
§55-17-6. Construction of article.

§55-17-1. Findings; purpose.

(a) The Legislature finds that there are numerous actions, suits and proceedings filed against state government agencies and officials that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In these actions, the Legislature is not directly involved as a party. The Legislature is not a proper party to these actions because of an extensive structure of constitutional protections established to safeguard the prerogatives of the legislative branch under our governmental system of checks and balances. Government agencies and their officials require more notice of these actions and time to respond to them and the Legislature requires more timely information regarding these actions, all in order to protect the public interest. The Legislature further finds that protection of the public interest is best served by clarifying that no government agency may be subject to awards of punitive damages in any judicial proceeding.

(b) The Legislature further finds that there are numerous actions, suits and proceedings filed on behalf of the State of West Virginia or a government agency thereof, that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In such litigation, the Governor, Department of Administration and the Legislature may not be directly involved as parties. Additionally, the Governor, Department of Administration and the Legislature need advance notice of potential moneys that may become available as a result of seizure or forfeiture.
of assets under state or federal criminal law. The Governor, Department of Administration and the Legislature require more timely information regarding these actions in order to protect the public interest. The Legislature further finds that protection of the public interest is best served by requiring notice to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates of any action brought on behalf of the state or a government agency thereof, which may result in a judgment, award or settlement and when the state or a government agency thereof, becomes eligible for moneys from state or federal seizure or forfeiture of assets in criminal cases.

(c) It is the purpose of this article to establish procedures to be followed in certain civil actions filed on behalf of or against state government agencies and their officials.

§55-17-5. Notice of settlement, seizure or forfeiture.

(a) So that the Governor, the Department of Administration and the Legislature may be aware of potential awards, the person or entity bringing any action on behalf of the State of West Virginia, or a government agency thereof, which could result in settlement or judgment shall upon commencement of the action and prior to entering into any settlement agreement which directs how the money should be expended, notify and provide copies of pleadings and related documents to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates.

(b) When a government agency becomes aware that moneys may be available to them from a state or federal seizure or forfeiture in a criminal case they shall notify the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of
Delegates: Provided, That the total value of the assets to be seized or forfeited exceeds two hundred and fifty thousand dollars.

§55-17-6. Construction of article.

(a) It is the express intent of the Legislature that the provisions of this article be liberally construed to effectuate the public policy set forth in section one of this article.

(b) The provisions of this article may not be construed to impose any liability upon a state agency from which the agency is otherwise immune.

CHAPTER 2

(S.B. 1006 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)

[Passed March 16, 2008; in effect from passage.]
[Approved by the Governor on March 21, 2008.]

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 West Virginia Conservation Agency, fund 0132, fiscal year 2008, organization 1400, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2008, organization 0205, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year
WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor’s statement of the State Fund - General Revenue there now remains an unappropriated balance in the state Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; 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 eight, to fund 0132, fiscal year 2008, organization 1400, be supplemented and amended and by increasing an existing item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

EXECUTIVE

West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2008 Org 1400

<table>
<thead>
<tr>
<th>General Activity Funds</th>
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<tbody>
<tr>
<td>Soil Conservation Projects (R)</td>
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</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0186, fiscal year 2008, organization 0201, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF ADMINISTRATION

Department of Administration-
Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2008 Org 0201
<table>
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<th>General Revenue Activity Funds</th>
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<tbody>
<tr>
<td>3b Teachers’ Retirement</td>
</tr>
<tr>
<td>Savings Realized .............. 095 $ 1,602,000</td>
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The above appropriation for Teachers’ Retirement Savings Realized (fund 0186, activity 095) shall be transferred to the Department of Administration - Office of the Secretary - Employee Pension and Health Care Benefits Fund (fund 2044).

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0195, fiscal year 2008, organization 0205, be supplemented and amended by adding new items of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF ADMINISTRATION**

*19–Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 2008 Org 0205

<table>
<thead>
<tr>
<th>General Revenue Activity Funds</th>
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<tbody>
<tr>
<td>1 Pension Merger Administra-</td>
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<tr>
<td>tive Costs (R) .............. 429 $ 2,000,000</td>
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<tr>
<td>2 Supplemental Benefits for</td>
</tr>
<tr>
<td>Annunitants (R) .............. 892 $ 2,042,400</td>
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</table>
The above appropriation for Supplemental Benefits for Annuitants (activity 892) may be transferred to the appropriate special revenue funds of the Consolidated Public Retirement Board for expenditure as determined by the executive secretary.

Any unexpended balance remaining in the appropriation for Supplemental Benefits for Annuitants (fund 0195, activity 892) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0256, fiscal year 2008, organization 0307, be supplemented and amended by increasing existing items of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF COMMERCE**

*36–West Virginia Development Office* (WV Code Chapter 5B)

Fund 0256 FY 2008 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>7</td>
<td>Unclassified</td>
<td>099</td>
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<tr>
<td>35</td>
<td>Local Economic Development Assistance (R)</td>
<td>819</td>
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</table>
The above appropriation for Unclassified is for the Southern Appalachian Labor School’s Youth Build Program.

And that chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill, be supplemented and amended by adding to Title II, section one thereof the following:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF COMMERCE

41a–WORKFORCE West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2008 Org 0323

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<th>Activity</th>
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<tbody>
<tr>
<td>1 Unclassified</td>
<td>Total (R) .................. 096 $ 674,392</td>
</tr>
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Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0572, activity 096) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0294, fiscal year 2008, organization 0431, 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 and the Arts

52–Department of Education and the Arts-
Office of the Secretary
(WV Code Chapter 5F)

Fund 0294 FY 2008 Org 0431

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Funds</th>
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<tbody>
<tr>
<td>Unclassified</td>
<td>$100,000</td>
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</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0407, fiscal year 2008, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

Title II--Appropriations.

Section 1. Appropriations of General Revenue.

Department of Health and Human Resources

61–Division of Health-
Central Office
(WV Code Chapter 16)

Fund 0407 FY 2008 Org 0506
And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0403, fiscal year 2008, organization 0511, be supplemented and amended by increasing an existing item of appropriation and adding a new item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*65–Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2008 Org 0511

<table>
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<th>General Revenue Funds</th>
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<tr>
<td>20 OSCAR and RAPIDS</td>
<td>$ 875,000</td>
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<tr>
<td>33a Capital Outlay and Maintenance (R)</td>
<td>$ 500,000</td>
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</table>
Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0403, activity 755) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0450, fiscal year 2008, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

72–Division of Corrections-
Correctional Units

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

Fund 0450 FY 2008 Org 0608

<table>
<thead>
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<th>Activity</th>
<th>General Revenue Funds</th>
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<tbody>
<tr>
<td>12</td>
<td>Payments to Federal,</td>
</tr>
<tr>
<td>13</td>
<td>County and/or Regional Jails (R)</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Payments to Federal, County and/or Regional Jails (fund 0450, activity 555) at the close of the fiscal year two thousand eight.
thousand eight is hereby reappropriated for expenditure
during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand eight, to fund 0589,
fiscal year 2008, organization 0441, be supplemented and
amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

HIGHER EDUCATION

90–Higher Education Policy Commission-
Administration-
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2008 Org 0441.

7a Capital Outlay and
Maintenance (R) ............... 755 $ 8,000,000

Any unexpended balance remaining in the appropriation
for Capital Outlay and Maintenance (fund 0589, activity 755)
reappropriated for expenditure during the fiscal year two
thousand nine.

The purpose of this supplemental appropriation bill is to
supplement, amend, increase and add items of appropriations
in the aforesaid accounts for the designated spending units
for expenditure during the fiscal year two thousand eight.
AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Division of Natural Resources, fund 3267, fiscal year 2008, organization 0310, and to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2008, organization 0508, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor’s Executive Budget Document, Statement of Lottery Net Profits, there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; 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 eight, to fund 3267, fiscal year 2008, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Sec. 4. Appropriations from Lottery Net Profits.

3 242–Division of Natural Resources

4 (WV Code Chapter 20)

5 Fund 3267 FY 2008 Org 0310

6 Activity Lottery Funds

7 3a Capital Outlay -

8 Parks (R) ................. 288 $12,000,000

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 5405, fiscal year 2008, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

15 TITLE II--APPROPRIATIONS.

16 Sec. 4. Appropriations from Lottery Net Profits.

17 248–Bureau of Senior Services-

18 Lottery Senior Citizens Fund

19 (WV Code Chapter 29)

20 Fund 5405 FY 2008 Org 0508
The purpose of this supplementary appropriation bill is to supplement, amend, add and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 4

(S.B. 1008 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)

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 - Public Defender Services, fund 0226, fiscal year 2008, organization 0221, to the Department of Education - State Department of Education, fund 0313, fiscal year 2008, organization 0402, to the Department of Education - State Department of Education - State Aid to Schools, fund 0317, fiscal year 2008, organization 0402, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2008, organization 0432, to the Department of Education and the Arts - Educational Broadcasting Authority, fund 0300, fiscal year
2008, organization 0439, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 0310, fiscal year 2008, organization 0932, to the Department of Health and Human Resources - Department of Health and Human Resources - Office of the Secretary, fund 0400, fiscal year 2008, organization 0501, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2008, organization 0506, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 0456, fiscal year 2008, organization 0613, and to the Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2008, organization 0441, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; 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 eight; 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 eight, to fund 0226, fiscal year 2008, organization 0221, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF ADMINISTRATION

26–Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2008 Org 0221

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a</td>
<td>$ 6,000,000</td>
</tr>
<tr>
<td>Surplus (R)</td>
<td>............... 435</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees - Surplus (fund 0226, activity 435) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0313, fiscal year 2008, 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

46–State Department of Education
And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand eight, to fund 0317,
fiscal year 2008, 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

48–State Department of Education-

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2008 Org 0402

13 Public Employees’ Insurance

Matching - Surplus ............ 290 $ 5,744,475

And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand eight, to fund 0293,
fiscal year 2008, organization 0432, 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 AND THE ARTS

53–Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2008 Org 0432

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified - Surplus (R)</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0293, activity 097) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0300, fiscal year 2008, organization 0439, 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 AND THE ARTS

55–Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2008 Org 0439

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Surplus (R)</td>
<td>097 $ 472,625</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0300, activity 097) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0310, fiscal year 2008, organization 0932, 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 AND THE ARTS

56–State Board of Rehabilitation-
Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2008 Org 0932
Title II--Appropriations.

Section 1. Appropriations of General Revenue.

Department of Health and Human Resources

60--Department of Health and Human Resources -
Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2008 Org 0501

1 Unclassified - Surplus . . . . . . . 097 $ 50,000
And that the total appropriation for the fiscal year ending 
the thirtieth day of June, two thousand eight, to fund 0407, 
fiscal year 2008, 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

61-Division of Health-
Central Office

(WV Code Chapter 16)

Fund 0407 FY 2008 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services - Surplus . . . . . 243</td>
<td>$ 133,578</td>
</tr>
<tr>
<td>3 Employee Benefits - Surplus . . . . . 250</td>
<td>$ 47,116</td>
</tr>
<tr>
<td>6 Unclassified - Surplus . . . . . . . . 097</td>
<td>$ 353,220</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending 
the thirtieth day of June, two thousand eight, to fund 0456, 
fiscal year 2008, organization 0613, be supplemented and 
amended by increasing an existing item of appropriation and 
adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

74–Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2008 Org 0613

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Veterans Nursing Home - Surplus</td>
<td>$1,194,131</td>
</tr>
<tr>
<td>9a Vehicle Purchase - Surplus</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0589, fiscal year 2008, organization 0441, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

HIGHER EDUCATION

90–Higher Education Policy Commission-
Administration-
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2008 Org 0441
The purpose of this supplemental appropriation bill is to supplement, amend, add and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 5

(S.B. 1009 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)

[Passed March 16, 2008; in effect from passage.]
[Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand eight, to the Department of Administration - Office of the Secretary - Employee Pension and Health Care Benefit Fund, fund 2044, fiscal year 2008, organization 0201, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Administration -
Office of the Secretary - Employee Pension and Health Care Benefit Fund, fund 2044, fiscal year 2008, organization 0201, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF ADMINISTRATION

4 113a–Office of the Secretary-

5 Employee Pension and Health Care Benefit Fund

6 (WV Code Chapter 18)

7 Fund 2044 FY 2008 Org 0201

8

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>Unclassified - Total</td>
</tr>
</tbody>
</table>

9 $ 1,602,000

10 The above appropriation for Unclassified - Total (fund 2044, activity 096) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers Retirement System Employers Accumulation Fund (fund 2601).
The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending the thirtieth day of June, two thousand eight, by providing for a new item of appropriation to be established therein to appropriate funds for the designated spending unit for expenditure during the fiscal year two thousand eight.

CHAPTER 6

(S.B. 1011 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)

[Passed March 16, 2008; in effect from passage.]
[Approved by the Governor on March 21, 2008.]

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenue for the fiscal year two thousand eight, less regular and surplus appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the state Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; 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 eight, to fund 7208, fiscal year 2008, organization 0705, be supplemented and amended to hereafter read as follows:

1. **TITLE II--APPROPRIATIONS.**

2. **Sec. 5. Appropriations from State Excess Lottery Revenue Fund.**

3. 

4. 258–Lottery Commission–

5. Excess Lottery Revenue Fund Surplus

6. Fund 7208 FY 2008 Org 0705

7. 

8. Activity Lottery Funds

9. 1 Capitol Complex - Capital Outlay .................... 417 $51,500,000

10. 2 Unclassified - Transfer .............. 482 $16,900,000
12 3 Consolidated Public Retirement -
13 4 Transfer .......................... 918  $24,516,867
14 5 Total ............................... $92,916,867

From the above appropriation for Unclassified - Transfer (activity 482) twelve million nine hundred thousand dollars shall be transferred to the General Revenue Fund only after all funding required by section eighteen-a, article twenty-two, chapter twenty-nine of the Code of West Virginia has been satisfied as determined by the Director of the Lottery but before any other nonstatutory appropriations to the State Excess Lottery Revenue Fund are funded.

From the above transfer for Unclassified - Transfer (activity 482) four million dollars shall be transferred to Underground Storage Tank Insurance Fund (fund 3218, org 0313).

The above appropriation for Consolidated Public Retirement - Transfer (fund 7208, activity 918) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers Retirement System Employers Accumulation Fund (fund 2601) only after all funding required by section eighteen-a, article twenty-two, chapter twenty-nine of the Code of West Virginia and the transfer to the General Revenue Fund (fund 7208, org 0705, activity 482) has been satisfied as determined by the Director of the Lottery.

The above appropriation for Capitol Complex - Capital Outlay (fund 7208, activity 417) shall be transferred to the Capitol Dome and Capital Improvements Fund (fund 2257) only after all funding required by section eighteen-a, article twenty-two, chapter twenty-nine of the Code of West Virginia and the transfer to the General Revenue Fund (fund 7208, org 0705, activity 482) has been satisfied as determined by the Director of the Lottery.
Should the actual revenues accruing to the total State Excess Lottery Revenue Fund be insufficient to fully fund all appropriations, the appropriation to the Capital Complex - Capital Outlay (activity 417) shall be reduced to the extent funds are available and the appropriation made in the reduced amount and thereafter transferred to the Capital Dome and Capital Improvement Fund (fund 2257).

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 3170, fiscal year 2008, organization 0307, be supplemented and amended by adding new items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

262–West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2008 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recreational Grants or Economic Development Loans (R)</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Economic Development Assistance (R)</td>
<td>$ 2,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Recreational Grants or Economic Development Loans (fund 3170, activity 253) or Economic Development Assistance (fund 3170, fund 900) at the close of the fiscal year two thousand eight are hereby
reappropriated for expenditure during the fiscal year two thousand nine.

From the above appropriation for Recreational Grants or Economic Development Loans (activity 253) one hundred thousand dollars is for Mercer County Horse Park.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 5219, fiscal year 2008, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

263–Division of Health
Central Office

(WV Code Chapter 16)

Fund 5219 FY 2008 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Capital Outlay and Maintenance (R)</td>
<td>755</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 5219, activity 755) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill, be
supplemented and amended by adding to Title II, section five thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

263a–Department of Military Affairs and Public Safety–Office of the Secretary

(WV Code Chapter 5F)

Fund 6005 FY 2008 Org 0601

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Interoperable Communications</td>
<td></td>
</tr>
<tr>
<td>2 System (R)</td>
<td>303 $10,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Interoperable Communications System (fund 6005, activity 303) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.
263b–Division of Corrections-
Correctional Units

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

Fund 6283 FY 2008 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>Capital Outlay, Repairs and Equipment (R)</th>
<th>Capital Outlay and Maintenance</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>589</td>
<td>755</td>
<td>$1,500,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 6283, activity 589) and Capital Outlay and Maintenance, (fund 6283, activity 755) at the close of the fiscal year two thousand eight are hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

265a–Higher Education Policy Commission-
Administration-
Control Account
(WV Code Chapter 18B)

Fund 4932 FY 2008 Org 0441

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Research Investment</td>
<td>020</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>2 Advanced Technology Centers (R)</td>
<td>028</td>
<td>$30,000,000</td>
</tr>
<tr>
<td>3 Energy Savings Loan Program</td>
<td>050</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>4 Allied Health Program Expansion</td>
<td>052</td>
<td>$7,154,898</td>
</tr>
<tr>
<td>5 Higher Education Grant Program</td>
<td>164</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>6 HEAPS Grant Program (R)</td>
<td>867</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$96,154,898</td>
</tr>
</tbody>
</table>

The above appropriation for Research Investment (fund 4932, activity 020) shall be transferred to the West Virginia Research Trust Fund.

Any unexpended balances remaining in the appropriations for Advanced Technology Centers (fund 4932, activity 028), Energy Savings Loan Program (fund 4932, activity 050), Allied Health Program Expansion (fund 4932, activity 052) and HEAPS Grant Program (fund 4932, activity 867) at the close of the fiscal year two thousand eight are hereby reappropriated for expenditure during the fiscal year two thousand nine.

The above appropriation for Higher Education Grant Program (activity 164) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by section three, article five, chapter eighteen-c of the Code of West Virginia.
The purpose of this supplemental appropriation bill is to supplement, amend, add and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 7

(H.B. 101 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 16, 2008; in effect from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to repeal §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-7A-14, §18-7A-18, §18-7A-34 and §18-7A-40 of said code; to amend and reenact §18-7B-7, §18-7B-7a and §18-7B-8 of said code; and to amend said code by adding thereto a new article, designated §18-7D-1, §18-7D-2, §18-7D-3, §18-7D-4, §18-7D-5, §18-7D-6, §18-7D-7, §18-7D-8, §18-7D-9, §18-7D-10 and §18-7D-11, all relating to the State Teachers Retirement System and the Teachers' Defined Contribution System generally; relating to the voluntary transfer of assets from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System; computing teachers' service; authorizing certain loans; providing legislative findings and purpose; providing definitions; providing opportunities for members of the State Teachers' Defined Contribution Retirement System to affirmatively elect to transfer their assets to the State Teacher's Retirement System; establishing requirements and processes for members to affirmatively elect to transfer; providing
responsibilities of the Consolidated Public Retirement Board; setting forth dates and time periods for members to affirmatively elect to transfer; providing for education about the opportunity to affirmatively elect to transfer; requiring notice to members; allowing Consolidated Public Retirement Board to contract directly for professional services for purposes of performing its responsibilities related to the voluntary transfer; providing for voluntary transfer from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System if sixty-five percent or more of the actively contributing members affirmatively elect to transfer; providing for transfer of assets from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System upon the affirmative election of sixty-five percent or more of the actively contributing members; providing for service credit in the State Teachers Retirement System; permitting transferring members to pay an Actuarial Reserve in order to receive full credit upon transfer if at least sixty-five percent but less than seventy-five percent of actively contributing members affirmatively elect to transfer; permitting transferring members to pay a one and one-half percent contribution plus interest in order to receive full credit upon transfer if seventy-five percent or more of actively contributing members affirmatively elect to transfer; addressing withdrawals and cash outs; addressing qualified domestic relations orders; providing for vesting and minimum guarantees of benefits for members affirmatively electing to transfer; and prohibiting retirement without appropriate notice.

Be it enacted by the Legislature of West Virginia:

That §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14 of the Code of West Virginia, 1931, as amended, be repealed; that §18-7A-14, §18-7A-18, §18-7A-34 and §18-7A-40 of said code be amended and reenacted; that §18-7B-7, §18-7B-7a and §18-7B-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new
article, designated §18-7D-1, §18-7D-2, §18-7D-3, §18-7D-4, §18-7D-5, §18-7D-6, §18-7D-7, §18-7D-8, §18-7D-9, §18-7D-10 and §18-7D-11, all to read as follows:

Article
7A. State Teachers Retirement System.
7B. Teachers' Defined Contribution Retirement System.
7D. Voluntary Transfer From Teachers' Defined Contribution Retirement System to State Teachers Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14. Contributions by members; contributions by employers.
§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.
§18-7A-34. Loans to members.

§18-7A-14. Contributions by members; contributions by employers.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member's monthly gross salary to the retirement board: Provided, That any member employed by a state institution of higher education shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the Teachers Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the Teachers Retirement System for that purpose.

(b) Annually, the contributions of each member shall be credited to the member's account in the Teachers Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section and every member shall be considered to have given consent to
the deductions. No deductions, however, shall be made from
the earnable compensation of any member who retired
because of age or service and then resumed service unless as
provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and
payable under this article, shall equal annually the total
deductions from the gross salary of members required by this
section. Beginning the first day of July, one thousand nine
hundred ninety-four, the rate shall be seven and one-half
percent; beginning on the first day of July, one thousand nine
hundred ninety-five, the rate shall be nine percent; beginning
on the first day of July, one thousand nine hundred ninety-six, the rate shall be ten and one-half percent; beginning on
the first day of July, one thousand nine hundred ninety-seven,
the rate shall be twelve percent; beginning on the first day of
July, one thousand nine hundred ninety-eight, the rate shall
be thirteen and one-half percent; and beginning on the first
day of July, one thousand nine hundred ninety-nine and
thereafter, the rate shall be fifteen percent: Provided, That the
rate shall be seven and one-half percent for any individual
who becomes a member of the Teachers Retirement System
for the first time on or after the first day of July, two
thousand five, or any individual who becomes a member of
the Teachers Retirement System as a result of the voluntary
transfer contemplated in article seven-d of this chapter.

(d) Payment by an employer to a member of the sum
specified in the employment contract minus the amount of
the employee's deductions shall be considered to be a full
discharge of the employer's contractual obligation as to
earnable compensation.

(e) Each contributor shall file with the retirement board
or with the employer to be forwarded to the retirement board
an enrollment form showing the contributor's date of birth
and other data needed by the retirement board.
§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.

(a) There is hereby created in the State Treasury a special revenue account designated the “Teachers Employers Contribution Collection Account” to be administered by the Consolidated Public Retirement Board. The Teachers Employers Contribution Collection Account shall be an interest-bearing account with interest credited to and deposited in the account and transferred in accordance with the provisions of this section.

(b) There shall be deposited into the Teachers Employers Contribution Collection Account the following:

(1) Contributions of employers, through state appropriations, and such amounts shall be included in the budget bill submitted annually by the Governor;

(2) Beginning on the first day of July, two-thousand five, contributions from each county in an amount equal to fifteen percent of all salary paid in excess of that authorized for minimum salaries in sections two and eight-a, article four, chapter eighteen-a of this code and any salary equity authorized in section five of said article or any county supplement equal to the amount distributed for salary equity among the counties for each individual who was a member of the Teachers’ Retirement System before the first day of July, two-thousand five: Provided, That the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after the first day of July, two-thousand five or any individual who becomes a member of the Teachers’ Retirement System as a result of the transfer contemplated in article seven-d of this chapter;
30 (3) The amounts transferred pursuant to section eighteen-
31 a of this article; and

32 (4) Any other moneys, available and not otherwise
33 expended, which may be appropriated or transferred to this
34 account.

35 (c) Moneys on deposit in the Teacher Employers
36 Contribution Collection Account shall be transferred monthly
37 in the following order:

38 (1) To the Teachers’ Retirement System Fund the amount
39 certified by the Consolidated Public Retirement Board as the
40 actuarially required contribution; and

41 (2) The balance, if any, to the Employee Pension and
42 Health Care Benefits Fund established under section thirty-
43 nine, article seven-a of this chapter.

44 (d) There is hereby continued in the State Treasury a
45 separate irrevocable trust designated the Teachers’
46 Retirement System Fund. The Teachers’ Retirement System
47 Fund shall be invested as provided in section nine-a, article
48 six, chapter twelve of this code.

49 (e) There shall be deposited into the Teachers’
50 Retirement System Fund, the following:

51 (1) Moneys transferred from the Teachers Employers
52 Contribution Collection Account;

53 (2) Member contributions provided for in section fifteen
54 of this article;

55 (3) Gifts and bequests to the fund and any accretions and
56 accumulations which may properly be paid into and become
57 a part of the fund;
Specific appropriations to the fund made by the Legislature;

Interest on the investment of any part or parts of the fund; and

Any other moneys, available and not otherwise expended, which may be appropriated or transferred to the Teachers Retirement System or the Fund.

The Teachers Retirement System Fund shall be the fund from which annuities shall be paid.

The Consolidated Public Retirement Board has sole authority to direct and approve the making of any and all fund transfers as provided in this section, anything in this code to the contrary notwithstanding.

References in the code to the Teachers Accumulation Fund, the Employers Accumulation Fund, the Benefit Fund, the Reserve Fund and the Expense Fund mean the Teachers Retirement System Fund.

§18-7A-34. Loans to members.

An actively contributing member of the retirement system upon written application may borrow from his or her individual account in the Teachers Retirement System, subject to these restrictions:

Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (A) Eight thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans during the one-year
period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (B) fifty percent of the member’s contributions to his or her individual account in the Teachers Retirement System: Provided, however, That if the total amount of loaned money outstanding exceeds forty million dollars, the maximum shall not exceed three thousand dollars until the Retirement Board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized: Provided further, That the amount of any loan made pursuant to article seven-d of this chapter is not included for the purposes of determining if the forty million dollar threshold has been exceeded.

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the Board: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(3) No member is eligible for more than one outstanding loan at any time: Provided, That the foregoing provision does not apply to any loan made pursuant to article seven-d of this chapter. Upon full payment of a loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(4) If a refund is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from the refund.
(5) From his or her monthly salary as a teacher or a nonteacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer is responsible for making the salary deductions and reporting them to the Retirement Board. At the option of the board, loan deductions may be collected as prescribed herein for the collection of members’ contribution, or may be collected through issuance of warrant by employer. If the borrower is no longer employed as a teacher or nonteaching member, the borrower must make monthly loan payments directly to the Consolidated Public Retirement Board and the Board must accept the payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after it becomes due and payable under the terms of the loan or after the grace period established in the discretion of the Board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code: Provided, That any refund or offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the retirement system.

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the board determines.
(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, and accordingly, the Retirement Board is authorized to: (A) apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (B) adopt plan loan policies or procedures consistent with these federal law provisions; and (C) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The Retirement Board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of Section 72(p)(2) or Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

(b) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any teacher or nonteacher who becomes a member of the Teachers Retirement System on or after the first day of July, two thousand five: Provided, That a member is eligible for a loan under article seven-d of this chapter to pay all or part of the Actuarial Reserve, or if available in accordance with the provisions of subsection (d), section six, article seven-d of this chapter, the one and one-half percent contribution for service in the Teachers’ Defined Contribution System for the purpose of receiving additional service credit in the State Teachers Retirement System pursuant to section six, article seven-d, of this chapter.

Nothing in this article or article seven-b of this chapter shall be construed:

(1) To be in conflict with section four-a, article twenty-three, chapter eighteen of this code; or

(2) To affect the membership of higher education employees who are currently members of either the State Teachers Retirement System created in this article or the Teachers’ Defined Contribution Retirement System created in article seven-b of this chapter: Provided, That any higher education employees who are currently members of the Teachers’ Defined Contribution Retirement System may become members of the Teachers Retirement System upon meeting the requirements of article seven-d of this chapter.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7. Participation in Teachers’ Defined Contribution Retirement System; limiting participation in existing Teachers Retirement System.

§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

§18-7B-8. Voluntary participation in system; expiration of right to elect membership in defined contribution system.

§18-7B-7. Participation in Teachers’ Defined Contribution Retirement System; limiting participation in existing Teachers Retirement System.

(a) Beginning the first day of July, one thousand nine hundred ninety-one, and except as provided in this section, the Teachers’ Defined Contribution Retirement System shall be the single retirement program for all new employees whose employment commences on or after that date and all new employees shall be required to participate. No additional new employees except as may be provided in this section may be admitted to the existing Teachers Retirement System.
(b) Members of the existing Teachers Retirement System whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, and those whose employment was terminated after the thirtieth day of June, one thousand nine hundred ninety-one, under a reduction in force are not affected by subsection (a) of this section and shall continue to contribute to and participate in the existing Teachers Retirement System without a change in plan provisions or benefits.

(c) Any person who was previously a member of the Teachers Retirement System and who left participating employment before the creation of the Teachers’ Defined Contribution Retirement System on the first day of July, one thousand nine hundred ninety-one, and who later returns to participating employment after the effective date of this section shall return to the existing Teachers Retirement System.

(d) Any person who was, prior to the first day of July, one thousand nine hundred ninety-one, a member of the existing Teachers Retirement System who left participating employment before the creation of the Teachers’ Defined Contribution Retirement System on the first day of July, one thousand nine hundred ninety-one, and who later returned to participating employment after that date and who was precluded from returning to the existing Teachers Retirement System as a result of prior provisions of this section, may become a member of the Teachers Retirement System upon meeting the requirements provided in article seven-d of this chapter.

(e) Any employee whose employment with an employer was suspended or terminated while he or she served as an officer with a statewide professional teaching association, is eligible for readmission to the existing retirement system in which he or she was a member.
(f) An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service or any other approved break in service authorized by the Board is eligible for readmission to the existing retirement system in which he or she was a member.

(g) In all cases in which a question exists as to the right of an employee to readmission to membership in the existing Teachers Retirement System, the Consolidated Public Retirement Board shall decide the question.

(h) Any individual who is not a “member” or “employee” as defined by section two of this article and any individual who is a leased employee is not eligible to participate in the Teachers’ Defined Contribution Retirement System. For purposes of this section, 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. In all cases in which a question exists as to whether an individual is eligible for membership in this system, the Consolidated Public Retirement Board shall decide the question.

(i) Effective the first day of July, two thousand five and continuing through the first day of two thousand six, any employee of River Valley Child Development Services, Inc., who is a member of the Teachers’ Defined Contribution Retirement System may elect to withdraw from membership and join the private pension plan provided by River Valley Child Development Services, Inc.

(j) River Valley Child Development Services, Inc., and its successors in interest shall provide for their employees a pension plan in lieu of the Teachers’ Defined Contribution Retirement System on or before the first day of July, two thousand five, and continuing thereafter during the existence of the River Valley Child Development Services, Inc., and its
successors in interest. All new employees hired after the thirtieth day of June, two thousand five, shall participate in the pension plan in lieu of the Teachers’ Defined Contribution Retirement System.

(k) The administrative body of River Valley Child Development Services, Inc., shall, on or before the first day of June, two thousand five, give written notice to each employee who is a member of the Teachers’ Defined Contribution Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member’s options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures, prepared by an independent actuary, in support of the explanation regarding the individual member’s current account balance, vested and nonvested, and his or her projected return upon remaining in the Teacher’s Defined Contribution Retirement System until retirement, disability or death, in comparison with the projected return upon withdrawing from the Teachers’ Defined Contribution Retirement System and joining a private pension plan provided by River Valley Child Development Center, Inc., and remaining therein until retirement, disability or death. The administrative body shall keep in its records a permanent record of each employee’s signature confirming receipt of the notice.

§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

The retirement system created and established in this article shall be closed and no new members accepted in the system after the thirtieth day of June, two thousand five. Notwithstanding the provisions of sections seven and eight of this article, all persons who are regularly employed for full-time service as a member or an employee whose initial employment commences after the thirtieth day of June, two
thousand five, shall become a member of the State Teachers’ Retirement System created and established in article seven-a of this chapter: Provided, That any person rehired after the thirtieth day of June, two thousand five, shall become a member of the Teachers’ Defined Contribution Retirement System created and established in this article, or of the Teachers Retirement System created and established in article seven-a of this chapter, depending upon which system he or she last contributed to while he or she was employed with an employer mandating membership and contributions to one of those plans: Provided, however, That a rehired person who thereby becomes a member of the Teachers’ Defined Contribution Retirement System may become a member of the Teachers Retirement System within the applicable time periods and upon meeting the requirements provided in article seven-d of this chapter.

§18-7B-8. Voluntary participation in system; expiration of right to elect membership in defined contribution system.

(1) Any employee who is a member of the existing retirement system may, upon written election, voluntarily elect membership in the Teachers’ Defined Contribution Retirement System, on a prospective basis, on or after the first day of July, one thousand nine hundred ninety-one. All benefits earned by any employee making a voluntary election under the existing retirement system prior to the voluntary election shall be frozen and made available to that employee upon retirement as provided by the existing retirement system. A member of the existing retirement system who has less than five years of contributing service in the existing retirement system may elect to withdraw his or her contribution plus interest thereon as if the member is terminating employment and upon withdrawal shall deposit the funds in the defined contribution system: Provided, That the member's years of contributing service in the existing system shall be applied toward the years of employment
service required under section eleven of this article:
Provided, however, That this election is allowed on a retroactive basis to the first day of July, one thousand nine hundred ninety-one. For the purposes of this section, "frozen" means that the member's salary, years of service and any other factor to determine benefits shall be calculated as of the date that the member elected membership in the defined contribution system and after that date no increase in salary, years of service or any other factor may be used to increase the retirement benefit above that which it would be if a person retired upon the date that the election is made. After having made the election, the employee may not change such election or again become a member of the existing retirement system.

(2) Notwithstanding any provision of this section to the contrary, after the thirtieth day of June, two thousand five, no person who is a member of the State Teachers Retirement System may elect membership in the Teachers’ Defined Contribution Retirement System.

ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§ 18-7D-1. Legislative findings and purpose.
§ 18-7D-2. Definitions.
§ 18-7D-3. Voluntary transfers.
§ 18-7D-4. Notice, education, record-keeping requirements.
§ 18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.
§ 18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.
§ 18-7D-7. Period for affirmative election to transfer; board may contract for professional services.
§ 18-7D-8. Results considered final.
§ 18-7D-9. Qualified domestic relations orders.
§ 18-7D-10. Vesting.
§ 18-7D-11. Minimum guarantees.
§18-7D-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares as follows:

1. That the quality of this state's education system is largely dependent upon the quality of its teachers and educational service personnel;

2. That many West Virginia teachers and education service personnel who currently are members of the Teachers' Defined Contribution Retirement System desire to join a defined benefit system, which relieves participants of bearing the risk of investment performance and offers the security of providing participants with advanced knowledge of their anticipated retirement benefit;

3. That other members of the Teachers' Defined Contribution Retirement System remain comfortable with bearing the attendant market risks and performance of their investments associated with managing the individual retirement accounts of that system;

4. That it is in the best interests of the teachers and education service personnel in this state, as well as the state’s system of public education as a whole, to permit members of the Teachers' Defined Contribution Retirement System to voluntarily elect membership in the State Teachers Retirement System pursuant to the provisions of this article; and

5. That the prudent and fiscally sound management of the State Teachers Retirement System necessitates that a sufficient number of members of the Teachers' Defined Contribution Retirement System elect to voluntarily transfer their assets to the State Teachers Retirement System in accordance with the provisions of this article.
§18-7D-2. Definitions.

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

1. “Actively contributing member of the Teachers’ Defined Contribution Retirement System” means a member of that retirement system who was actively contributing to the Teachers’ Defined Contribution Retirement System on the thirty-first day of December, two thousand seven.

2. “Actuarial Reserve” means the Actuarial Reserve Lump Sum Value of the additional service credit being purchased by a member so electing in accordance with the provisions of section six of this article.

3. “Actuarial Reserve Adjusted Salary” means either:

   (A) For a member with a full year service credit in the fiscal year ending the thirtieth day of June, two thousand seven, the member’s two thousand seven fiscal year salary increased by seven percent;

   (B) For a member with less than a full year service credit in the fiscal year ending the thirtieth day of June, two thousand seven, the member’s two thousand seven fiscal year salary annualized to a full year based on the partial year service credit increased by seven percent; or

   (C) For a member without service credit in the fiscal year ending the thirtieth day of June; two thousand seven, the member’s annualized contract salary in effect on the thirty-first day of December, two thousand seven increased by seven percent, or the member’s annual contract salary on the date of rehire if after the thirty-first day of December, two thousand seven.
(4) “Actuarial Reserve Benefit Date” means the first day of the month coincident with or next following the date at which the member attains the age of sixty, or the thirtieth day of June, two thousand nine, whichever is later.

(5) “Actuarial Reserve Benefit Date Factors” mean the actuarial lump sum value factors based on a life only annuity starting on the Actuarial Reserve Benefit Date applying the 1983 Group Annuity Mortality Tables on a seventy-five percent female and a twenty-five percent male blended Unisex basis and interest at seven and one-half percent.

(6) “Actuarial Reserve Discount Factor” means the annual discount factor applied for the period between the thirtieth day of June, two thousand nine and the Actuarial Reserve Benefit Date, if any. Such factor based on the State Teachers Retirement System actuarial valuation assumptions shall estimate the impact of mortality, disability, and economic factors for such discount period by application of a net four percent discount rate.

(7) “Actuarial Reserve Lump Sum Value” means a single sum amount calculated as: A benefit of two percent multiplied by the Defined Contribution Retirement System service credit being purchased multiplied by the Actuarial Reserve Adjusted Salary; such benefit multiplied by the Actuarial Reserve Benefit Date Factors to determine the lump sum value multiplied by the Actuarial Reserve Discount Factor.

(8) “Affirmatively elect to transfer” means the voluntary execution and delivery to the Consolidated Public Retirement Board, by a member of the Teachers’ Defined Contribution Retirement System of a document in a form prescribed by the board that irrevocably authorizes the board to transfer the member and all the member’s assets in the Teachers’ Defined Contribution Retirement System to the State Teachers
Retirement System: Provided, That delivery of the document to the Consolidated Public Retirement Board may be accomplished through submission of the document to the supervisor of a work site pursuant to section seven of this article: Provided, however, That any previous member of the State Teachers Retirement System who voluntarily elected to terminate his or her membership in the State Teachers Retirement System to become a member of the Teachers’ Defined Contribution Retirement System and signed an irrevocable transfer request also may affirmatively elect to transfer notwithstanding the prior transfer request.

(9) "Assets" means all member contributions and employer contributions made on the member's behalf to the Defined Contribution Retirement System and earnings thereon, less any applicable fees as approved by the board: Provided, That if a member has withdrawn or cashed out any amounts, the amounts must have been repaid.

(10) "Board" means the Consolidated Public Retirement Board established in article ten-d, chapter five of this code, and its employees.

(11) "Date of transfer" means, in the event that sixty-five percent or more of the actively contributing members of the Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, the first day of July, two thousand eight.

(12) "Defined Contribution Retirement System" means the Teachers' Defined Contribution Retirement System established in article seven-b of this chapter.

(13) “Member” means any person who has an account balance standing to his or her credit in the Teachers' Defined Contribution Retirement System.
(14) "Salary" means:

(A) For a member contributing to the Defined Contribution Retirement System during the two thousand seven fiscal year, the actual salary earned for the two thousand seven fiscal year divided by the employment service earned in the two thousand seven fiscal year.

(B) For a member not contributing to the Defined Contribution Retirement System during the two thousand seven fiscal year, the contract salary on the date of rehire.

(15) "State Teachers Retirement System" means the State Teachers Retirement System established in article seven-a of this chapter.

§18-7D-3. Voluntary transfers.

(a) In accordance with the provisions of this article, the Consolidated Public Retirement Board shall effect the voluntary transfer of members of the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System.

(b) If at least sixty-five percent of actively contributing members of the Teachers’ Defined Contribution System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, then the Consolidated Public Retirement Board shall transfer to the State Teachers Retirement System, effective the first day of July, two thousand eight, all members who affirmatively elected to do so during that period. If at least sixty-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System do not affirmatively elect to transfer to the State Teachers Retirement System within that period, the Defined Contribution Retirement System continues as the retirement
§18-7D-4. Notice, education, record-keeping requirements.

(a) Commencing not later than the first day of April, two thousand eight, the board shall begin an educational program with respect to the voluntary transfer of actively contributing members of the Teachers' Defined Contribution Retirement System and their assets to the State Teachers Retirement System.

(1) This educational program shall address, at a minimum:

(A) The law providing for the transfer;

(B) The mechanics of the transfer;

(C) The process by which an actively contributing member may affirmatively elect to transfer;

(D) Relevant dates and time periods;

(E) The benefits, potential advantages and potential disadvantages if members fail or refuse to affirmatively elect to transfer;

(F) The benefits, potential advantages and potential disadvantages of becoming a member of the State Teachers Retirement System;

(G) Potential state and federal tax implications attendant to the various options available to the members;

(H) For each member, a summary to include his or her most recent account balance; the average rate of return of the
Standard and Poor’s and the Lehman U. S. Corporate/Government Index for the previous ten years; the average rate of return of an indexed balanced fund for the previous ten years; the member’s projected account balance if he or she retires at age sixty and age sixty-five; the current cost of purchasing a monthly annuity under the Teachers’ Defined Contribution Retirement System; the monthly annuity that the member would receive under the Teachers Retirement System if the member chooses to purchase the full service credit and retire at age sixty and age sixty-five; the monthly annuity under the Teachers Retirement System if the participant chooses not to purchase the full service credit and retires at age sixty and age sixty-five, and the potential cost to the member of purchasing the Actuarial Reserve or the one and one-half percent contribution plus accrued interest, as the case may be, not including the cost of obtaining a loan under section five of this article.

(I) Any other pertinent information considered relevant by the board.

(2) The board shall disseminate the information through:

(A) Its website;

(B) Computer programs;

(C) Written or electronic materials, or both;

(D) Classes or seminars, pursuant to subdivision (3) of this subsection;

(E) At the discretion of the board, through a program of individual counseling which is optional on the part of the member; and

(F) Through any other educational program considered necessary by the board.
The Consolidated Public Retirement Board shall provide the information set forth in subdivision (1) of this subsection through classes or seminars in accordance with the following:

(A) The Consolidated Public Retirement Board shall provide training for conducting the classes or seminars for employees of county boards, for employees of state institutions of higher education or for any other person that the county board or the institution of higher learning determines, with the approval of the Consolidated Public Retirement Board, would be appropriate to conduct the classes or seminars;

(B) Each county board shall require at least two representatives to attend the training. The representatives must be approved by the Consolidated Public Retirement Board prior to attending the Board’s training class;

(C) Each county board shall ensure that each employee of that county board who is a member of the Teachers’ Defined Contribution Retirement System has had an opportunity to attend a class or a seminar on the topics set forth in subdivision (1) of this subsection at his or her work site during his or her workday;

(D) The class or seminar shall be conducted by any person who attended the training or by a representative of a school personnel organization that the Consolidated Public Retirement Board considers qualified to conduct the class or seminar;

(E) The classes or seminars may be conducted at the time allocated for professional activities for teachers on instructional support and enhancement days, before school, after school and at any other time during an employee’s work day: Provided, That the classes or seminars may interfere
with instructional time only if no other time is available to conduct the classes or seminars;

(F) Each county board shall ensure that informational booths are set up at each work site under the jurisdiction of the county board and that the booths are attended on a rotating basis by an person trained to conduct the classes or seminars or by a representative of a school personnel organization that the Consolidated Public Retirement Board considers qualified to attend the booth;

(G) During the period provided by this section for the educational program, each county board and its superintendent shall allow representatives of the Consolidated Public Retirement Board entry upon the premises of each school in this state where the Consolidated Public Retirement Board determines appropriate on at least one occasion for the duration of at least sixty minutes during regular school hours to provide educational programs as the Consolidated Public Retirement Board determines appropriate for members of the Teachers’ Defined Contribution Retirement System;

(b) The board shall provide each actively contributing member with a copy of the written or electronic educational materials and with a copy of the notice of the opportunity to affirmatively elect to transfer, to the extent deliverable, by mailing a copy thereof, first class postage prepaid, through the United States mails to the most current mailing address provided by the member to the board. The board is not required to deliver, nor is any member entitled to delivery of, these materials by any other means. The notice shall provide full and appropriate disclosure regarding the process by which a member may affirmatively elect to transfer, including the period of the opportunity to affirmatively elect to transfer.
(c) It is the responsibility of each member of the Teachers’ Defined Contribution Retirement System to keep the board informed of his or her current address. A member who does not is considered to have waived his or her right to receive any information from the board with respect to the purposes of this article.

(d) Once the board has complied with the provisions of this section, each actively contributing member of the Teachers’ Defined Contribution Retirement System is considered to have actual notice of the opportunity to affirmatively elect to transfer and all matters pertinent thereto.

(e) The executive director of the Consolidated Public Retirement Board shall report to the Governor, the President of the Senate, and the Speaker of the House of Delegates no later than April 1, two thousand eight, a plan for the execution of the education and outreach requirements set forth in this section.

§18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

(a) If at least sixty-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, then the Consolidated Public Retirement Board shall transfer the members and all properties held in the Teachers’ Defined Contribution Retirement System’s Trust Fund in trust for those members who affirmatively elected to do so during that period to the State Teachers Retirement System, effective on the first day of July, two thousand eight.
(b) The board shall make available to each member a loan for the purpose of paying all or part of the Actuarial Reserve, or if available in accordance with the provisions of subsection (d), section six of this article, the one and one-half percent contribution for service in the Teachers’ Defined Contribution System to receive additional service credit in the State Teachers Retirement System for service in the Teachers’ Defined Contribution Retirement System pursuant to section six of this article. The loan shall be offered in accordance with the provisions of section thirty-four, article seven-a of this chapter.

(1) Notwithstanding any provision of this code, rule or policy of the board to the contrary, the interest rate on any loan may not exceed seven and one-half percent per annum. The total amount borrowed may not exceed forty thousand dollars: Provided, That the loan may not exceed the limitations of the Internal Revenue Code Section 72(p).

(2) In the event a loan made pursuant to this section is used to pay the Actuarial Reserve or the one and one-half percent contribution, as the case may be, the board shall make any necessary adjustments at the time the loan is made.

(3) The board shall make this loan available until the thirtieth day of June, two thousand nine.

(c) The board shall develop and institute a payroll deduction program for repayment of the loan established in this section.

(d) If at least sixty-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article:
(1) As of the first day of July, two thousand eight, the transferred members' contribution rate becomes six percent of his or her salary or wages; and

(2) All transferred members who work one hour or more and who make a contribution into the State Teachers Retirement System on or after the first day of July, two thousand eight, are governed by the provisions of article seven-a of this chapter, subject to the provisions of this article.

(e) Subject to the provisions of subdivision (1) of this subsection, if a member has withdrawn or cashed out part of his or her assets, that member will not receive credit for those moneys cashed out or withdrawn. The board shall make a determination as to the amount of credit a member loses based on the periods of time and the amounts he or she has withdrawn or cashed out, which shall be expressed as a loss of service credit.

(1) A member may repay those amounts he or she previously cashed out or withdrew, along with interest as determined by the board, and receive the same credit as if the withdrawal or cash-out never occurred. To receive full credit for the cashed-out or withdrawn amounts being repaid to the State Teachers Retirement System, the member also shall pay the actuarial reserve, or the one and one-half percent contribution, as the case may be, pursuant to section six of this article.

(2) The loan provided in this section is not available to members to repay previously cashed out or withdrawn moneys.

(3) If the repayment occurs five or more years following the cash-out or withdrawal, the member also shall repay any forfeited employer contribution account balance along with interest determined by the board.
(f) Notwithstanding any provision of subsection (e) to the contrary, if a member has cashed out or withdrawn any of his or her assets after the last day of June, two thousand three, and that member chooses to repurchase that service after the thirtieth day of June, two thousand eight, the member shall repay the previously distributed amounts and any applicable interest to the State Teachers Retirement System.

(g) Any service in the State Teachers Retirement System a member has before the date of the transfer is not affected by the provisions of this article.

(h) The board shall take all necessary steps to see that the voluntary transfers of persons and assets authorized by this article do not affect the qualified status with the Internal Revenue Service of either retirement plan.

§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.

(a) Any member who has affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article whose assets have been transferred from the Teachers’ Defined Contribution Retirement System to the State Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is, depending upon the percentage of actively contributing members affirmatively electing to transfer, entitled to service credit in the State Teachers Retirement System in accordance with the provisions of subsections (c) or (d) of this section.

(b) Any such member who has made withdrawals or cash outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.
(c) If at least sixty-five percent but less than seventy-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, for any member of the Defined Contribution Retirement System who elects to transfer to the State Teachers Retirement System, his or her service credit in the State Teachers Retirement System is determined as follows:

(1) For any member affirmatively electing to transfer, the member’s State Teachers Retirement System credit shall be seventy-five percent of the member’s Teachers’ Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;

(2) To receive full credit in the State Teachers Retirement System for service in the Teachers’ Defined Contribution Retirement System for which assets are transferred, transferring members shall have the option to pay into the State Teachers Retirement System the Actuarial Reserve, as defined in section two of this article, by no later than the thirtieth day of June, two thousand nine.

(d) If at least seventy-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, for any member of the Defined Contribution Retirement System who elects to transfer to the State Teachers Retirement System, his or her service credit in the State Teachers Retirement System is determined as follows:

(1) For any member affirmatively electing to transfer, the member’s State Teachers Retirement System credit shall be
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49 seventy-five percent of the member’s Teachers’ Defined
50 Contribution Retirement System service credit, less any
51 service previously withdrawn by the member or due to a
52 qualified domestic relations order and not repaid;

53 (2) To receive full credit in the State Teachers Retirement
54 System for service in the Teachers’ Defined Contribution
55 Retirement System for which assets are transferred, members
56 who affirmatively elected to transfer shall pay into the State
57 Teachers Retirement System a one and one-half percent
58 contribution. This contribution shall be calculated as one and
59 one-half percent of the member's estimated total earnings for
60 which assets are transferred, plus interest of four percent per
61 annum accumulated from the date of the member’s initial
62 participation in the Defined Contribution Retirement System.

63 (A) For a member contributing to the Defined
64 Contribution Retirement System at any time during the two
65 thousand eight fiscal year and commencing membership in
66 the State Teachers Retirement System on the first day of July,
67 two thousand eight:

68 (i) The estimated total earnings shall be calculated based
69 on the member's salary and the member's age nearest birthday
70 on the thirtieth day of June, two thousand eight;

71 (ii) This calculation shall apply both an annual backward
72 salary scale from that date for prior years' salaries and a
73 forward salary scale for the salary for the two thousand eight
74 fiscal year.

75 (B) The calculations in paragraph (A) of this subdivision
76 are based upon the salary scale assumption applied in the
77 West Virginia Teachers Retirement System Actuarial
78 Valuation as of the first day of July, two thousand seven,
79 prepared for the Consolidated Public Retirement Board. This
80 salary scale shall be applied regardless of breaks in service.
(e) All service previously transferred from the State Teachers Retirement System to the Teachers’ Defined Contribution Retirement System is considered Teachers’ Defined Contribution Retirement System service for the purposes of this article.

(f) Notwithstanding any provision of this code to the contrary, the retirement of a member who becomes eligible to retire after the member’s assets are transferred to the State Teachers Retirement System pursuant to the provisions of this article may not commence prior to the first day of September, two thousand eight: Provided, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the school year beginning two thousand eight during the school year two thousand eight unless the member has provided a written notice to his or her county board of education by the first day of July, two thousand eight, of his or her intent to retire.

§18-7D-7. Period for affirmative election to transfer; board may contract for professional services.

(a) The board shall provide the members of the Teachers’ Defined Contribution Retirement System an opportunity to voluntarily execute and deliver to the Consolidated Public Retirement Board, or its designee, a written document in a form prescribed by the board that irrevocably authorizes the board to transfer the member and all the member’s assets in the Teachers’ Defined Contribution Retirement System to the State Teachers Retirement System in accordance with the provisions of this article.

(b) If at least sixty-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System:
14 (1) The Consolidated Public Retirement Board shall, for each member who affirmatively elected to transfer as provided in this section, transfer the assets held in the Teachers’ Defined Contribution Retirement System’s Trust Fund in trust for that member to the State Teachers Retirement System on the first day of July, two thousand eight;

21 (2) On the first day of July, two thousand eight, each member who so elected becomes a member of the State Teachers Retirement System and after working one or more hours and contributing to the State Teachers Retirement System is entitled to the benefits of the State Teachers Retirement System; and

27 (3) Each such member is governed by the provisions of the State Teachers Retirement System subject to the provisions of this article.

30 (c) If fewer than sixty-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System, the transfers described in this section shall not occur.

35 (d) Any person who has one dollar or more in assets in the Teachers’ Defined Contribution Retirement System on the last day of December, two thousand seven, may and is eligible to affirmatively elect to transfer to the State Teachers Retirement System as provided in this section. For purposes of this article:

41 (1) The tabulation of the percentage required for transfer as required in this article shall only include documents affirmatively electing to transfer submitted under the provisions of this subsection by those who are actively contributing members of the Teachers’ Defined Contribution
Retirement System as that term is defined in section two of this article; and

(2) Notwithstanding the opportunity to submit documents affirmatively electing to transfer extended by this article to members other than those who are actively contributing members of the Teachers’ Defined Contribution Retirement System, there shall be no duty or other obligation on the part of the board to provide any education, information or notice regarding matters contained in this article to members who are not actively contributing members of the Teachers’ Defined Contribution Retirement System regarding any matter described in this article, nor any right on the part of those other members to receive the same.

(e) Notwithstanding any other provision of this code to the contrary, the board may do all things necessary and convenient to maintain the Teachers’ Defined Contribution Retirement System and the State Teachers Retirement System during the transitional period and may retain the services of the professionals it considers necessary to do so. The board may also retain the services of professionals necessary to:

(1) Assist in the preparation of educational materials;

(2) Assist in the educational process;

(3) Assist in the process for submission of the documents whereby members may affirmatively elect to transfer; and

(4) Ensure compliance with all relevant state and federal laws.

(f) Due to the time constraints inherent in the initial processes established for the submission of documents affirmatively electing to transfer set forth in this article in specific, and due to the nature of the professional services
required by the Consolidated Public Retirement Board in
general, the provisions of article three, chapter five-a of this
code, do not apply to any materials, contracts for any
actuarial services, investment services, legal services or other
professional services authorized under the provisions of this
article and the provisions of article six, chapter twenty-nine
do not apply to any employment of or contracting for
personnel by the board for the purposes of implementing the
provisions of this article.

(g) The submission of the documents whereby members
may affirmatively elect to transfer may be held through any
method the board determines is in the best interest of the
members: Provided, That for members of the Teachers’
Defined Contribution Retirement System, the submission of
the documents whereby those members elect to transfer shall
be pursuant to the procedure established by the Consolidated
Public Retirement Board set forth in subsection (j) of this
section.

(h) The period for submission of the documents whereby
members may affirmatively elect to transfer shall begin not
later than the first day of April, two thousand eight. The
board shall ascertain the results of the submissions not later
than the last day of May, two thousand eight. The board shall
certify the results of the submissions to the Governor, the
Legislature and the members not later than the fifth day of
June, two thousand eight.

(i) The submission period terminates and elections to
transfer may not be accepted from a member after the twelfth
day of May, two thousand eight, subject to the following:

(1) If elections to transfer are permitted through the mail,
any submission postmarked later than the twelfth day of May,
two thousand eight, is void and may not be counted;
(2) If elections to transfer are delivered to a supervisor on selection day or on or before the ninth day of May, two thousand eight, any submission postmarked or deposited with a commercial carrier later than the thirteenth day of May, two thousand eight, is void and may not be counted: Provided, That delivery by mail must be by certified mail, return receipt requested or delivery by commercial courier that requires written confirmation by the board of delivery;

(3) The fifth day of May, two thousand eight, is selection day upon which each county board and superintendent shall provide an opportunity in each school within the county for members of the Teachers' Defined Contribution System to affirmatively elect to transfer.

(j) The Consolidated Public Retirement Board shall collaborate with the state superintendent, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education to establish a procedure whereby all actively contributing members of the Teachers' Defined Contribution Retirement System may deliver to the Consolidated Public Retirement Board or its designee the written document authorizing transfer through a supervisor at each work site where any contributing member of the Defined Contribution Retirement System is employed. The procedure shall include at least the following:

(1) The supervisor at each work site is responsible for collecting the written documents authorizing the transfer from all actively contributing members of the Teachers' Defined Contribution Retirement System employed at the work site who choose to submit the written document. The supervisor shall record the receipt of all written documents authorizing transfer, shall direct the member submitting the written document to initial a receipt log and shall issue a receipt to the member submitting the written document.
(2) On and after the sixth day of May, two thousand eight, but on or before the ninth day of May, two thousand eight, the supervisor at the work site shall make reasonable efforts to contact verbally and in writing all actively contributing members of the Teachers’ Defined Contribution Retirement System employed at the work site that have not submitted their written documents as of that date to remind those members of the upcoming deadline for submitting their written document authorizing transfer: Provided, That failure of the supervisor to make contact with any of those members shall not be a basis for a cause of action to allow a member to transfer after the period provided in this section or for any other cause of action.

(3) The supervisor at each work site shall forward all of the written documents to the Consolidated Public Retirement Board, or its designee, through certified mail, or delivery by commercial courier that requires written confirmation by the board of delivery, no later than the thirteenth day of May, two thousand eight. The work site supervisor shall inform the Consolidated Public Retirement Board of all of the written documents received each day so that the board, or its designee, can record which members of the Teachers’ Defined Contribution Retirement System have submitted their written documents authorizing transfer pursuant to subsection (k) of this section.

(4) For the purposes of this subdivision, the principal of a school with any of grades prekindergarten through twelve is the work site supervisor. For the purposes of this subdivision, for any work site under the jurisdiction of the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education, the human resource administrator or other designee may be considered the work site supervisor. In any case where the person who is the work site supervisor is in question, the state board, the Chancellor for Higher Education or the
Chancellor for Community and Technical College Education, whichever entity has jurisdiction over the work site, shall designate the supervisor.

(5) The state board, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education shall ascertain the names of all work site supervisors under their jurisdiction and transmit a list of the names of the work site supervisors to the Consolidated Public Retirement Board on or before the thirty-first day of March, two thousand eight.

(k) The Consolidated Public Retirement Board, or its designee, shall record the receipt of all written documents authorizing the transfer so that it knows the percentage of contributing members of the Teachers’ Defined Contribution Retirement System that have submitted the written documents by work site and by county.

§18-7D-8. Results considered final.

Every member of the Teachers’ Defined Contribution Retirement System is considered to have made an informed, educated, knowing and voluntary decision and choice with respect to the opportunities provided by this article to transfer membership and assets to the State Teachers Retirement System. Each member who failed or refused to affirmatively elect to transfer is also considered to have made an informed, educated, knowing and voluntary decision and choice with respect thereto and is bound by the results thereof, except as may be required by federal law.

§18-7D-9. Qualified domestic relations orders.

Any transferring member having a qualified domestic relations order against his or her defined contribution account is allowed to repurchase service in the State Teachers
Retirement System. The member shall repay any moneys previously distributed to the alternate payee along with the interest as set by the board. The member shall repay by the last day of June, two thousand fourteen. The provisions of this section are void and of no effect if there is no transfer from the Teachers’ Defined Contribution Retirement System to the State Teachers Retirement System. An alternate payee is not, solely as a result of that status, a member of either the Teachers’ Defined Contribution Retirement System or the State Teachers Retirement System for any purpose under the provisions of this article and no interest held by the alternate payee is transferred to the State Teachers Retirement System pursuant thereto.

§18-7D-10. Vesting.

Any member who works one hour or more after his or her assets are transferred to the State Teachers Retirement System pursuant to this article is subject to the vesting schedule set forth in article seven-a of this chapter: Provided, That if a member is vested under the Teachers’ Defined Contribution Retirement System and his or her last contribution was not made to the State Teachers Retirement System, that member is subject to the vesting schedule set forth in article seven-b of this chapter.

§18-7D-11. Minimum guarantees.

(a) Any member of the Teachers’ Defined Contribution Retirement System who works one hour or more and who has made a contribution to the State Teachers Retirement System after his or her assets are transferred to the State Teachers Retirement System pursuant to this article, is guaranteed a minimum benefit equal to his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers’ Defined Contribution Retirement System, plus any earnings thereon, as of the
(b) A member of the Teachers’ Defined Contribution Retirement System who works one hour or more and who has made contributions to the State Teachers Retirement System after his or her assets are transferred to the State Teachers Retirement System, upon eligibility to receive a distribution under article seven-a of this chapter, shall have at a minimum the following three options:

(1) The right to receive an annuity from the State Teachers Retirement System based upon the provisions of article seven-a of this chapter;

(2) The right to withdraw from the State Teachers Retirement System and receive his or her member accumulated contributions in the State Teachers Retirement System, plus refund interest thereon, as set forth in article seven-a of this chapter; or

(3) The right to withdraw and receive his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers’ Defined Contribution Retirement System, plus any earnings thereon as of the date his or her assets are transferred to the State Teachers Retirement System pursuant to this article, as determined by the board pursuant to the vesting provisions of article seven-a of this chapter. This amount shall be distributed in a lump sum.

(c) Any member of the Teachers’ Defined Contribution Retirement System who does not work one hour or more and who makes no contribution to the State Teachers Retirement System after his or her assets are transferred to the State Teachers Retirement System pursuant to this article, is guaranteed the receipt of the amount in his or her total vested
account in the Teachers’ Defined Contribution Retirement System on the date of the transfer, plus interest thereon, at four percent accruing from the date of the transfer. This amount shall be distributed in a lump sum: Provided, That no benefits may be obtained under this subsection solely by the reciprocity provisions of sections three, four, and six, article thirteen, chapter five of this code.

CHAPTER 8

(H.B. 102 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
(By Request of the Executive)

[Passed March 16, 2008; in effect June 30, 2008.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §18B-2A-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-3C-13 of said code, relating to higher education generally; establishing boards of governors for independent community and technical colleges; providing for the initial appointment to and the terms of office of members of the boards of governors for independent community and technical colleges; relating to the appointment and membership of institutional boards of governors of state institutions of higher education; and providing for the election of a chairperson of an institutional board of governors during the fiscal year beginning on the first day of July, two thousand eight.

Be it enacted by the Legislature of West Virginia:
That §18B-2A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18B-3C-13 of said code be amended and reenacted, all to read as follows:

Article

2A. Institutional Boards of Governors.
3C. Community and Technical College System.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment; establishment of boards for independent community and technical colleges.

(a) A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Marshall University, New River Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty State College, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

(b) Independent community and technical colleges established --

Effective the first day of July, two thousand eight, the board of advisors is abolished and a board of governors is established for Marshall Community and Technical College; Pierpont Community and Technical College, formerly a division of Fairmont State University; The Community and Technical College at West Virginia University Institute of Technology; West Virginia State Community and Technical College; and West Virginia University at Parkersburg.
(A) In making the initial appointments to these boards of governors, the Governor may appoint those persons who are lay members of the boards of advisors by the thirtieth day of June, two thousand eight.

(B) At the end of the initial term, and thereafter, an appointment to fill a vacancy on the board or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.

(c) The institutional boards of governors for Marshall University and West Virginia University consist of sixteen persons. The boards of governors of the other state institutions of higher education consist of twelve persons.

(d) Each board of governors includes the following members:

(1) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution;

(3) A member from the institutional classified employees duly elected by the classified employees of the respective institution; and

(4) For the institutional Board of Governors at Marshall University, thirteen lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(5) For the institutional Board of Governors at West Virginia University, twelve lay members appointed by the
Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the Board of Visitors of West Virginia University Institute of Technology.

(6) For each institutional board of governors of the other state institutions of higher education, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(e) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the thirteen members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the twelve members appointed by the Governor to the governing board of West Virginia University, no more than seven may be of the same political party. Of the nine members appointed by the Governor, at least six shall be residents of the state. Of the thirteen members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the twelve members appointed by the Governor to the governing board of West Virginia University, at least eight shall be residents of the state.

(f) The student member serves for a term of one year. Each term begins on the first day of July.

(g) The faculty member serves for a term of two years. Each term begins on the first day of July. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(h) The member representing classified employees serves for a term of two years. Each term begins on the first day of July. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.
(i) The appointed lay citizen members serve terms of up to four years each and are eligible to succeed themselves for no more than one additional term.

(j) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of June preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year except for the fiscal year beginning on the first day of July, two thousand eight only, when the board shall elect the chairperson in July. A member may not serve as chairperson for more than four consecutive years.

(k) The appointed members of the institutional boards of governors serve staggered terms of up to four years except that four of the initial appointments to the governing boards of community and technical colleges which become independent on the first day of July, two thousand eight are for terms of two years and five of the initial appointments are for terms of four years.

(l) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(1) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors, an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated
foundation organized and operated in support of one or more
state institutions of higher education; or a member of the
Council or Commission. This subsection does not prevent
the representative from the faculty, classified employees,
students, or the superintendent of a county board of education
from being members of the governing boards.

(2) For a community and technical college, a person is
ineligible for appointment who is an officer, employee or
member of any other board of governors; a member of a
board of visitors of any public institution of higher education;
an employee of any institution of higher education; an officer
or member of any political party executive committee; the
holder of any other public office, other than an elected county
office, or public employment, other than employment by the
county board of education, under the government of this state
or any of its political subdivisions; an employee of any
affiliated research corporation created pursuant to article
twelve of this chapter; an employee of any affiliated
foundation organized and operated in support of one or more
state institutions of higher education; or a member of the
Council or Commission. This subsection does not prevent
the representative from the faculty, classified employees,
students, or chairpersons of the boards of advisors from being
members of the governing boards.

(m) Before exercising any authority or performing any
duties as a member of a governing board, each member shall
qualify as such by taking and subscribing to the oath of office
prescribed by section five, article IV of the Constitution of
West Virginia and the certificate thereof shall be filed with
the Secretary of State.

(n) A member of a governing board appointed by the
Governor may not be removed from office by the Governor
except for official misconduct, incompetence, neglect of duty
or gross immorality and then only in the manner prescribed by law
for the removal of the state elective officers by the Governor.
(o) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-13. Legislative intent; Pierpont Community and Technical College established as independent state institution of higher education; governing board; institutional organization, structure, accreditation status.

(a) The intent of the Legislature in enacting this section is to provide for the most effective education delivery system for community and technical education programs to the entire region to be served by Pierpont Community and Technical College and to focus the institutional mission on achieving state goals, objectives, priorities, and essential conditions as established in articles one, one-d, and three-c of this chapter.

(b) Pierpont Community and Technical College is established as an independent state institution of higher education. Any reference in this code to Fairmont State Community and Technical College or to Pierpont Community and Technical College, a division of Fairmont State University, means the independent state institution of higher education known as Pierpont Community and Technical College.
(c) Effective the first day of July, two thousand eight, the board of advisors for Pierpont Community and Technical College is abolished and a governing board for that institution is appointed subject to the provisions of article two-a of this chapter. The administrative head of Pierpont Community and Technical College on the thirtieth day of June, two thousand eight, is the president of the independent community and technical college subject to the provisions of section five of this article.

(d) In the delivery of community and technical college education and programs, Pierpont Community and Technical College shall adhere to all provisions set forth in this code and rules promulgated by the Council for the delivery of education and programs, including, but not limited to, Council review and approval of academic programs, institutional compacts, master plans and tuition and fee rates, including capital fees.

(e) Pierpont Community and Technical College shall pursue independent accreditation status and the board of governors of the community and technical college shall provide through contractual arrangement for the administration and operation of Pierpont Community and Technical College by Fairmont State University while the community and technical college seeks appropriate independent accreditation. The contractual arrangement may not be implemented until approved by the Council and shall include provisions to ensure that the programs offered at Pierpont Community and Technical College are accredited while independent accreditation is being sought. Fairmont State University shall continue to provide services to the community and technical college which the community and technical college or the Council considers necessary or expedient in carrying out its mission under the terms of an agreement between the two institutions pursuant to the provisions of section twelve of this article.
(f) The Council has the authority and the duty to take all steps necessary to assure that the institution acquires independent accreditation status as quickly as possible. If the community and technical college fails to achieve independent accreditation by the first day of July, two thousand eleven, the Council shall sever any contractual agreement between Pierpont Community and Technical College and Fairmont State University and assign the responsibility for achieving independent accreditation to another state institution of higher education.

CHAPTER 9

(H.B. 103 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed March 16, 2008; in effect from passage.]  
[Approved by the Governor on March 21, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-22j; and to amend said code by adding thereto a new section, designated §18-7A-26u, all relating to the Public Employees Retirement System and the State Teachers Retirement System; and providing for a one-time bonus payment for certain annuitants.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10-22j; and that said code be amended by adding thereto a new section, designated §18-7A-26u, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22j. One-time bonus payment for certain annuitants effective July 1, 2008.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the system as provided in subsection (b) of this section. The one-time bonus payment shall equal six hundred dollars and shall be paid on the twenty-fifth day of July, two thousand eight.

(b) The one-time bonus payment provided by this section applies to any retirant with at least twenty years of credited service who currently receives an annual retirement annuity of not more than seven thousand two hundred dollars. This bonus payment is subject to any applicable limitations under section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiaries of a qualifying retirant who currently receive an annuity or other benefit payable by the system.
CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26u. One-time bonus payment for certain annuitants effective July 1, 2008.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the retirement system as provided in subsection (b) of this section. The one-time bonus payment shall equal six hundred dollars and shall be paid on the twenty-fifth day of July, two thousand eight.

(b) The one-time bonus payment provided in this section applies to any retirant with at least twenty years of service as a contributing member who currently receives an annual retirement annuity of not more than seven thousand two hundred dollars. This one-time bonus payment is subject to any applicable limitations under section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiaries of a qualifying retirant who currently receive an annuity or other benefit payable by the retirement system.
AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Department of Education and the Arts - Office of the Secretary - Control Account - Lottery Education Fund, fund 3508, fiscal year 2009, organization 0431, to the Division of Culture and History - Lottery Education Fund, fund 3534, fiscal year 2009, organization 0432, and to the Library Commission - Lottery Education Fund, fund 3559, fiscal year 2009, organization 0433, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the
fiscal year two thousand eight, less regular appropriations; and
further included the estimate of revenue for fiscal year two thousand
nine, less regular appropriations; and

WHEREAS, It appears from the Governor’s Statement of
Lottery Net Profits there now remains an unappropriated balance
which is available for appropriation during the fiscal year ending the
thirtieth day of June, two thousand nine; therefore

Be it enacted by the Legislature of West Virginia:

1. That the total appropriation for the fiscal year ending the
2. thirtieth day of June, two thousand nine, to fund 3508, fiscal
3. year 2009, organization 0431, be supplemented and amended
4. by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 4. Appropriations from Lottery Net Profits.

250–Department of Education and the Arts-
Office of the Secretary-
Control Account-
Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2009 Org 0431

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified (R)</th>
<th>099</th>
<th>$ 100,000</th>
</tr>
</thead>
</table>

And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand nine, to fund 3534,
fiscal year 2009, organization 0432, be supplemented and amended by increasing an existing item of appropriation as follows:

TITe II--APPROPRIATIONS.

Sec. 4. Appropriations from Lottery Net Profits.

251--Division of Culture and History-
Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2009 Org 0432

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairs and Festivals</td>
<td>$112,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 3559, fiscal year 2009, organization 0433, be supplemented and amended to read as follows:

TITe II--APPROPRIATIONS.

Sec. 4. Appropriations from Lottery Net Profits.

252--Library Commission-
Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2009 Org 0433
CHAPTER 2

(S.B. 2012- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 29, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund to the Division of Finance, fund 2208, fiscal year 2008,

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenue for the fiscal year two thousand eight, less regular and surplus appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

1 That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof, the following:

5 TITLE II--APPROPRIATIONS.

6 Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

8 260a–Division of Finance

9 Fund 2208 FY 2008 Org 0209
10 Activity

11 Lottery Funds

12 Enterprise Resource Planning

13 System Planning Project (R) $5,000,000

14 Any unexpended balance remaining in the appropriation for Enterprise Resource Planning System Planning Project (fund 2208, activity ___) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

15 The above appropriation for Enterprise Resource Planning System Planning Project, activity ___, shall be expended upon consultation with the executive and legislative branches.

16 And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 1736, fiscal year 2008, organization 2300, be supplemented and amended to read as follows:

259—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2008 Org 2300

32 Activity

33 Lottery Funds

34 Enterprise Resource Planning

35 System Development

36 Reserve (R) $25,000,000

37 Any unexpended balance remaining in the appropriation for Tax Reduction and Federal Funding Increased
Compliance (TRAFFIC)-Lottery Surplus (fund 1736, activity 929) at the close of the fiscal year two thousand seven is hereby reappropriated for expenditure during the fiscal year two thousand eight.

Any unexpended balance remaining in the appropriation for Enterprise Resource Planning System Development Reserve (fund 1736, activity _) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 3170, fiscal year 2008, organization 0307, be supplemented and amended by increasing an existing item of appropriation and adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

262–West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2008 Org 0307

<table>
<thead>
<tr>
<th>Activity Description</th>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recreational Grants or Economic</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Development Loans (R)</td>
<td>2</td>
<td>$ 3,000,000</td>
</tr>
<tr>
<td>Unclassified - Transfer</td>
<td>3</td>
<td>14,000,000</td>
</tr>
</tbody>
</table>

From the above appropriation for Unclassified - Transfer (activity 482), $5,000,000 shall be transferred to the Broadband Deployment Fund (fund 3172) and $9,000,000
shall be transferred to the Infrastructure Jobs and Development Council.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 5219, fiscal year 2008, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

263–Division of Health–Central Office

(WV Code Chapter 16)

Fund 5219 FY 2008 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Early Intervention</td>
<td>$2,491,646</td>
</tr>
</tbody>
</table>

The above appropriation for Early Intervention (fund 5219, activity 223) shall be transferred to the West Virginia Birth-to-Three Fund (fund 5214).

The purpose of this supplemental appropriation bill is to supplement, amend, add and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.
AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2008, organization 0508, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriations; and

WHEREAS, It appears from the Governor’s Statement of Lottery Net Profits there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

1. That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 5405, fiscal
TITLE II--APPROPRIATIONS.

Sec. 4. Appropriations from Lottery Net Profits.

248—Bureau of Senior Services-
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2008 Org 0508

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>917</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Silver Haired Legislature (fund 5405, activity 202) and In-Home Services and Nutrition for Senior Citizens (fund 5405, activity 917) at the close of fiscal year two thousand eight are hereby reappropriated for expenditure during the fiscal year two thousand nine.

The purpose of this supplementary appropriation 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 eight.
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Governor’s Office, fund 0101, fiscal year 2009, organization 0100, to the Department of Administration - West Virginia Retiree Health Benefit Trust Fund, fund 0611, fiscal year 2009, organization 0232, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2009, organization 0201, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, and to the Department of Education - State Department of Education, fund 0313, fiscal year 2009, organization 0402, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the twenty-fourth day of June, two thousand eight, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight, and an estimate
of revenues for the fiscal year two thousand nine, less regular appropriations; and

WHEREAS, It appears from the Governor’s statement of the State Fund - General Revenue there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand nine; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 0101, fiscal year 2009, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

5 TITLE II--APPROPRIATIONS.

6 Section 1. Appropriations from General Revenue.

EXECUTIVE

5–Governor’s Office

(WV Code Chapter 5)

Fund 0101, FY 2009 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 0611,
fiscal year 2009, organization 0232, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

30–West Virginia Retiree Health Benefit Trust Fund

(WV Code Chapter 5)

Fund 0611 FY 2009 Org 0232

<table>
<thead>
<tr>
<th>Activity</th>
<th>General</th>
<th>Act-</th>
<th>Lottery</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total - Transfer</td>
<td>402</td>
<td></td>
<td>$ 0</td>
<td></td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 0186, fiscal year 2009, organization 0201, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

18–Department of Administration-
Office of the Secretary
39  (WV Code Chapter 5F)
40  Fund 0186 FY 2009 Org 0201

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 Personal Services</td>
<td>$ 479,703</td>
</tr>
<tr>
<td>004 Annual Increment</td>
<td>2,486</td>
</tr>
<tr>
<td>010 Employee Benefits</td>
<td>124,292</td>
</tr>
<tr>
<td>095 Teachers’ Retirement Savings Realized</td>
<td>3,826,000</td>
</tr>
<tr>
<td>099 Unclassified</td>
<td>117,632</td>
</tr>
<tr>
<td>289 Benefits - Transfer</td>
<td>30,730,000</td>
</tr>
<tr>
<td>378 State Employee Sick</td>
<td>5,000,000</td>
</tr>
<tr>
<td>516 Lease Rental Payments</td>
<td>16,000,000</td>
</tr>
<tr>
<td>540 Design-Build Board</td>
<td>19,068</td>
</tr>
<tr>
<td>304 Financial Advisor (R)</td>
<td>200,000</td>
</tr>
<tr>
<td>913 BRIM Premium</td>
<td>10,071</td>
</tr>
<tr>
<td>Total</td>
<td>$ 56,509,252</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, activity 304) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

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

The above appropriation for Teachers’ Retirement Savings Realized (activity 095) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).
The above appropriation for State Employee Sick Leave Fund (activity 378) shall be transferred to the State Employee Sick Leave Fund (fund 2045, org 0201).

The above appropriation for Other Post Employee Benefits - Transfer (activity 289) shall be transferred to the Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232).

The above funds appropriated and directed to be transferred to the West Virginia Health Benefit Trust Fund - Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232) shall be treated by the trust as elective payments (over and above the minimum annual employer payment) made by respective employers in the West Virginia Public Employees Insurance Agency identified in the “PEIA Financial Plan” as “state fund risk pool” employers, for General Revenue Fund-compensated public employees. Such state fund risk pool employers shall be credited by the trust on a pro rata basis for these amounts paid on their behalf toward the annual required contribution as addressed in section six, article sixteen-d, chapter five of the Code of West Virginia.

From the above appropriation for Financial Advisor (activity 304) amounts may be expended for financial consulting services.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 0256, fiscal year 2009, organization 0307, be supplemented and amended by increasing an item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
DEPARTMENT OF COMMERCE

35–West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2009 Org 0307

<table>
<thead>
<tr>
<th>General Revenue Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified ........................ 099 $ 50,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified (activity 099), $50,000 is for the Rt. 2 Highway Authority.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 0313, fiscal year 2009, organization 0402, be supplemented and amended by adding a new item and increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

45–State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2009 Org 0402
CHAPTER 5

(S.B. 2015- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand nine, to the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2009, organization 0701, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.
WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2009, organization 0701, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 7007, fiscal year 2009, organization 0701, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

200–Office of the Secretary-
State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2009 Org 0701

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total - Transfer</td>
<td>$13,700,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total - Transfer shall be transferred to the Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232).
The above funds appropriated and directed to be transferred to the West Virginia Health Benefit Trust Fund - Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232) shall be treated by the trust as elective payments (over and above the minimum annual employer payment) made by respective employers in the West Virginia Public Employees Insurance Agency identified in the "PEIA Financial Plan" as "state fund risk pool" employers, for General Revenue Fund-compensated public employees. Such state fund risk pool employers shall be credited by the trust on a pro rata basis for these amounts paid on their behalf toward the annual required contribution as addressed in section six, article sixteen-d, chapter five of the Code of West Virginia.

The purpose of this supplementary appropriation bill is to supplement and amend by adding language to an account in the budget act for the fiscal year ending the thirtieth day of June, two thousand nine, for expenditure during the fiscal year two thousand nine.

CHAPTER 6

(S.B. 2016- By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed June 25, 2008; in effect from passage.] [Approved by the Governor on June 30, 2008.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 7208, fiscal year 2009, organization 0705, by supplementing and
amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.

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

1. That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 7208, fiscal year 2009, organization 0705, be supplemented and amended to read as follows:

<table>
<thead>
<tr>
<th>Title 11-- Appropriations.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 5. Appropriations from State Excess Lottery Revenue Fund.</td>
<td></td>
</tr>
<tr>
<td>264–Lottery Commission- Excess Lottery Revenue Fund Surplus</td>
<td></td>
</tr>
<tr>
<td>Fund 7208 FY 2009 Org 0705</td>
<td></td>
</tr>
</tbody>
</table>

| 1 | Capital Outlay-Parks ............ 288 | $ 0 |
| 2 | Other Post Employee Benefits- |  |
| 3 | Transfer .................. 289 | 46,600,000 |
| 4 | Capitol Complex-Capital Outlay .. 417 | 18,200,000 |
| 5 | Unclassified-Transfer ............ 482 | 62,900,000 |
| 6 | School Access Safety ............ 978 | 8,000,000 |
| 7 | Total .......................... | $ 135,700,000 |

The above appropriation for Unclassified-Transfer (activity 482) shall be transferred to the General Revenue Fund only after all funding required by chapter twenty-nine, article twenty-two, section eighteen-a of the Code of West Virginia has been satisfied as determined by the Director of the Lottery.
The above appropriation for School Access Safety (fund 7208, activity 978) shall be transferred to the School Access Safety Fund (fund 3516) only after all funding required by chapter twenty-nine, article twenty-two, section eighteen-a of the Code of West Virginia and the transfer to the General Revenue Fund (fund 7208, org 0705, activity 482) has been satisfied as determined by the Director of the Lottery.

The above appropriation for Capitol Complex-Capital Outlay (fund 7208, activity 417) shall be transferred to the Capitol Dome and Capital Improvements Fund (fund 2257) only after all the appropriations for activities 482 and 978 have been satisfied.

The above appropriation for Other Post Employee Benefits-Transfer (fund 7208, activity 289) shall be transferred to the Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232) only after the above appropriations for activities 482, 978 and 417 have been satisfied.

The above funds appropriated and directed to be transferred to the West Virginia Health Benefit Trust Fund - Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232) shall be treated by the Trust as elective payments (over and above the minimum annual employer payment) made by respective employers in the West Virginia Public Employees Insurance Agency identified in the “PEIA Financial Plan” as “state fund risk pool” employers, for General Revenue Fund-compensated public employees. Such state fund risk pool employers shall be credited by the trust on a pro rata basis for these amounts paid on their behalf toward the annual required contribution as addressed in section six, article sixteen-d, chapter five of the Code of West Virginia.
Should the actual revenues accruing to the total State Excess Lottery Revenue Fund be insufficient to fully fund all appropriations, the appropriation to the Other Post Employee Benefits-Transfer (activity 289) shall be reduced to the extent funds are available and the appropriation made in the reduced amount and thereafter transferred to the Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541).

The purpose of this supplementary appropriation bill is to supplement and amend by adding language to an item of appropriation in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand nine with no new money being appropriated.

CHAPTER 7

(S.B. 2017- By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed June 25, 2008; in effect from passage.] [Approved by the Governor on June 29, 2008.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand eight, to the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Revenue, Office of the
Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 7007, fiscal year 2008, organization 0701, be supplemented and amended to read as follows:

5 TITLE II--APPROPRIATIONS.

6 Sec. 3. Appropriations from other funds.

7 DEPARTMENT OF REVENUE

8 196a–Office of the Secretary-
9 State Debt Reduction Fund

(WV Code Chapter 29)

11 Fund 7007 FY 2008 Org 0701

12 General Activity Revenue Funds

13

14

15 1 Unclassified -
16 2 Total - Transfer . . . . . . . . . . 402 $ 5,800,000

17 The above appropriation for Unclassified - Total - Transfer shall be transferred to the Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232).

20 The above funds appropriated and directed to be transferred to the West Virginia Health Benefit Trust Fund -
Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232) shall be treated by the trust as elective payments (over and above the minimum annual employer payment) made by respective employers in the West Virginia Public Employees Insurance Agency identified in the “PEIA Financial Plan” as “state fund risk pool” employers, for General Revenue Fund-compensated public employees. Such state fund risk pool employers shall be credited by the trust on a pro rata basis for these amounts paid on their behalf toward the annual required contribution as addressed in section six, article sixteen-d, chapter five of the Code of West Virginia.

The purpose of this supplementary appropriation bill is to supplement and amend by adding language to an account in the budget act for the fiscal year ending the thirtieth day of June, two thousand eight, for expenditure during the fiscal year two thousand eight.

CHAPTER 8

(S.B. 2018- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand nine, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 8741, fiscal year 2009, organization 0612, all supplementing and amending
the appropriation for the fiscal year ending the thirtieth day of June, two thousand nine.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand nine, to fund 8741, fiscal year 2009, organization 0612, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

311--West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2009 Org 0612

1 Unclassified - Total ............ 096 $45,000,000

The purpose of this supplementary appropriation bill is to supplement and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand nine.
CHAPTER 9

(S.B. 2019- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 27, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

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 - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2008, organization 0205, to the Department of Administration - West Virginia Retiree Health Benefit Trust Fund, fund 0611, fiscal year 2008, organization 0232, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, to the Department of Commerce - Division of Natural Resources, fund 0265, fiscal year 2008, organization 0310, to the Department of Education - State Department of Education, fund 0313, fiscal year 2008, organization 0402, to the Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2008, organization 0431, to the Department of Environmental Protection - Division of Environmental Protection, fund 0273, fiscal year 2008, organization 0313, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2008, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2008, organization 0511, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2008, organization 0702, and to the Higher Education Policy Commission - Administration - Control Account, fund...
0589, fiscal year 2008, organization 0441, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the twenty-fourth day of June, two thousand eight, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, The Governor, by executive message dated the twenty-fourth day of June, two thousand eight, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand eight; 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 eight; therefore

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

1. That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0155, fiscal year 2008, organization 1600, be supplemented and amended and by adding a new item of appropriation as follows:

   **TITLE II--APPROPRIATIONS.**

   **Section 1. Appropriations from General Revenue.**

   **DEPARTMENT OF ADMINISTRATION**

   18–Department of Administration-
   Office of the Secretary
### APPROPRIATIONS

(WV Code Chapter 5F)

**Fund 0186 FY 2008 Org 0201**

<table>
<thead>
<tr>
<th>Activity Funds</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>8a Debt Reduction (R)</td>
<td>635</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Debt Reduction (fund 0186, activity 635) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0195, fiscal year 2008, organization 0205, be supplemented and amended by adding a new item of appropriation as follows:

### TITLE II--APPROPRIATIONS.

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF ADMINISTRATION**

19–Consolidated Public Retirement Board

(WV Code Chapter 5)

**Fund 0195 FY 2008 Org 0205**

<table>
<thead>
<tr>
<th>Activity Funds</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Consolidated Public Retirement - Transfer</td>
<td>918</td>
</tr>
</tbody>
</table>
The above appropriation for Consolidated Public Retirement - Transfer (fund 0195, activity 918) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers Retirement System Employers Accumulation Fund (fund 2601).

The appropriation for Consolidated Public Retirement - Transfer (activity 918) shall be applied toward the state cost of the Teachers’ Defined Contribution Retirement System plan participants selection to transfer to the Teachers Retirement System and any remaining amount of the appropriation in excess of that which may be required to compensate for the aforementioned shall go toward the general unfunded liability of the Teachers Retirement System.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0611, fiscal year 2008, organization 0232, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

31–West Virginia Retiree Health Benefit Trust Fund

(WV Code Chapter 5)

Fund 0611 FY 2008 Org 0232

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
</tr>
<tr>
<td>2</td>
<td>Total - Transfer</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Total - Transfer</td>
<td>402</td>
</tr>
</tbody>
</table>
The above appropriation for Unclassified - Total - Transfer (fund 0611, activity 402) shall be transferred to the Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232).

The above funds appropriated and directed to be transferred to the West Virginia Health Benefit Trust Fund - Other Post-Employment Benefit Contribution Accumulation Fund (fund 2541, org 0232) shall be treated by the trust as elective payments (over and above the minimum annual employer payment) made by respective employers in the West Virginia Public Employees Insurance Agency that are identified in the “PEIA Financial Plan” as “state fund risk pool” employers, for General Revenue Fund-compensated public employees. Such state fund risk pool employers shall be credited by the trust on a pro rata basis for these amounts paid on their behalf toward the annual required contribution as addressed in section six, article sixteen-d, chapter five of the Code of West Virginia.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0256, fiscal year 2008, organization 0307, be supplemented and amended by adding a new item of appropriation and increasing an existing item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF COMMERCE**

36–West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2008 Org 0307
<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a</td>
<td>079 $ 150,000</td>
</tr>
<tr>
<td>35</td>
<td>Local Economic Development</td>
</tr>
<tr>
<td>36</td>
<td>Assistance (R) 819 $ 2,500,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Infrastructure Projects (fund 0256, activity 079) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0265, fiscal year 2008, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>8a</td>
<td>761 $ 5,000,000</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Land Purchase (fund 0265, activity 761) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

The above appropriation for Land Purchase (activity 761) is authorized for expenditure: Provided, That by the first day of January, two thousand nine, a certified appraisal is completed and a letter of intent to purchase the land has been issued, as certified by the Secretary of the Department of Commerce.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0313, fiscal year 2008, organization 0402, be supplemented and amended by adding new items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

46–State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2008 Org 0402

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>7a</td>
<td>Transportation ..........</td>
</tr>
<tr>
<td>11a</td>
<td>Tax Assessment Errors ...</td>
</tr>
</tbody>
</table>
And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0294, fiscal year 2008, organization 0431, be supplemented and amended by adding a new item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF EDUCATION AND THE ARTS**

*52-Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2008 Org 0431

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a Digital Conversion (R)</td>
<td>$800,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Digital Conversion (fund 0294, activity 247) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0273, fiscal year 2008, organization 0313, be supplemented and amended to read as follows:

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**
APPROPRIATIONS  [Ch. 9

58–Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2008 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>Dam Safety</td>
<td>607</td>
</tr>
<tr>
<td>West Virginia Stream Partners</td>
<td>637</td>
</tr>
<tr>
<td>Program</td>
<td>776</td>
</tr>
<tr>
<td>WV Contribution to River</td>
<td>799</td>
</tr>
<tr>
<td>Efficiency Savings</td>
<td>855</td>
</tr>
<tr>
<td>Office of Water Resources</td>
<td>913</td>
</tr>
<tr>
<td>Nonenforcement Activity</td>
<td>993</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td></td>
</tr>
<tr>
<td>Welch DEP Office Continuing</td>
<td></td>
</tr>
<tr>
<td>Operation</td>
<td></td>
</tr>
</tbody>
</table>

From the above appropriations (fund 0273, organization 0313) an amount not to exceed $350,000 may be transferred to the Dam Safety Rehabilitation Revolving Fund (fund 3025).

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0407, fiscal year 2008, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61–Division of Health-
Central Office

(WV Code Chapter 16)

Fund 0407 FY 2008 Org 0506

<table>
<thead>
<tr>
<th>General Revenue Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 Maternal and Child Health</td>
</tr>
<tr>
<td>28 Clinics, Clinicians and Medical</td>
</tr>
<tr>
<td>29 Contracts and Fees (R)</td>
</tr>
</tbody>
</table>

575 $ 1,008,354

Any unexpended balances remaining in the appropriations for Emergency Response Entities - Special Projects (fund 0407, activity 822) and Antiviral Vaccine Purchases (fund 0407, activity 955) at the close of the fiscal year two thousand eight are hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0403, fiscal year 2008, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

.65–Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2008 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 Grants for Licensed Domestic Violence Programs and Statewide Prevention (R)</td>
<td>750 $ 1,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, activity 750) at the close of the fiscal year two thousand eight is hereby reappropriated for expenditure during the fiscal year two thousand nine.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0470, fiscal year 2008, organization 0702, be supplemented and amended by increasing an existing item of appropriation and adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF REVENUE

81–Tax Division

(WV Code Chapter 11)
The above appropriation for Unclassified - Transfer (fund 0470, activity 482) shall be transferred to the Motor Fuel Excise Tax Shortfall Reserve Fund.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0589, fiscal year 2008, organization 0441, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

90-Higher Education Policy Commission-
Administration-
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2008 Org 0441

PROMISE Scholarship -
Transfer

General
Revenue Funds

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>$1,445,000</td>
</tr>
<tr>
<td>7</td>
<td>$1,300,000</td>
</tr>
<tr>
<td>482</td>
<td>$40,000,000</td>
</tr>
</tbody>
</table>
The purpose of this supplemental appropriation bill is to supplement, amend, increase and add items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 10

(H.B. 213- By Mr. Speaker, Mr. Thompson)
[By Request of the Executive]

[Passed June 26, 2008; in effect ninety days from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §19-23-10 of the Code of West Virginia, 1931, as amended, relating to greyhound racing generally; limiting participation in the West Virginia Greyhound Breeding Development Fund to accredited West Virginia whelped greyhounds wholly or solely owned by bona fide residents of West Virginia; relating to greyhound training tracks constructed with monies from the West Virginia Greyhound Breeding Development Fund; providing for allocation and distribution of not more than two million dollars from the balance of the purse supplemental fund for the construction and maintenance of two greyhound training tracks and facilities subject to the approval of the Racing Commission; prohibiting the Racing Commission from requiring association membership as a prerequisite to participation in the West Virginia Greyhound Breeding Development Fund; requiring up to three races featuring accredited West Virginia whelped greyhounds per race card; requiring the Greyhound Owners and Breeders Association to submit additions or deletions to the accredited West Virginia whelped greyhounds registry; and requiring the Racing Commission to promulgate rules providing a process for
competitive bidding of the construction and/or maintenance of the training tracks and setting standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

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

That §19-23-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 23. HORSE AND DOG RACING.**

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the Racing
Commission, from the commission deducted each day by the
licensee from the pari-mutuel pools on thoroughbred racing
a tax calculated on the total daily contribution of all pari-
mutuel pools conducted or made at any and every
thoroughbred race meeting of the licensee licensed under the
provisions of this article. The tax, on the pari-mutuel pools
conducted or made each day during the months of January,
February, March, October, November and December, shall
be calculated at four tenths of one percent of the pool; and,
on the pari-mutuel pools conducted or made each day during
all other months, shall be calculated at one and four-tenths
percent of the pool: Provided, That out of the amount
realized from the three tenths of one percent decrease in the
tax effective for fiscal year one thousand nine hundred
ninety-one and thereafter, which decrease correspondingly
increases the amount of commission retained by the licensee,
the licensee shall annually expend or dedicate: (i) One half
of the realized amount for capital improvements in its barn
area at the track, subject to the Racing Commission's prior
approval of the plans for the improvements; and (ii) the
remaining one half of the realized amount for capital
improvements as the licensee may determine appropriate at
the track. The term "capital improvement" shall be as
defined by the Internal Revenue Code: Provided, however,
That any racing association operating a horse racetrack in this
state having an average daily pari-mutuel pool on horse
racing of two hundred eighty thousand dollars or less per day
for the race meetings of the preceding calendar year shall, in
lieu of payment of the pari-mutuel pool tax, calculated as in
this subsection, be permitted to conduct pari-mutuel wagering
at the horse racetrack on the basis of a daily pari-mutuel pool
tax fixed as follows: On the daily pari-mutuel pool not
exceeding three hundred thousand dollars the daily pari-
mutuel pool tax shall be one thousand dollars plus the
otherwise applicable percentage rate imposed by this
subsection of the daily pari-mutuel pool, if any, in excess of
three hundred thousand dollars: Provided further, That upon
the effective date of the reduction of the daily pari-mutuel
pool tax to one thousand dollars from the former two
thousand dollars, the association or licensee shall daily
deposit five hundred dollars into the special fund for regular
purses established by subdivision (1), subsection (b), section
nine of this article: And provided further, That if an
association or licensee qualifying for the foregoing alternate
tax conducts more than one racing performance, each
consisting of up to thirteen races in a calendar day, the
association or licensee shall pay both the daily license tax
imposed in subsection (a) of this section and the alternate tax
in this subsection for each performance: And provided
further, That a licensee qualifying for the foregoing alternate
tax is excluded from participation in the fund established by
section thirteen-b of this article: And provided further, That
this exclusion shall not apply to any thoroughbred racetrack
at which the licensee has participated in the West Virginia
thoroughbred development fund for more than four
consecutive years prior to the thirty-first day of December,
one thousand nine hundred ninety-two.

(c) Any racing association licensed by the Racing
Commission to conduct harness racing and permitting and
conducting pari-mutuel wagering under the provisions of this
article shall, in addition to the daily license tax required under
subsection (a) of this section, pay to the Racing Commission,
from the commission deducted each day by the licensee from
the pari-mutuel pools on harness racing, as a tax, three percent
of the first one hundred thousand dollars wagered, or any part
thereof; four percent of the next one hundred fifty thousand
dollars; and five and three-fourths percent of all over that
amount wagered each day in all pari-mutuel pools conducted or
made at any and every harness race meeting of the licensee
licensed under the provisions of this article.

(d) Any racing association licensed by the Racing
Commission to conduct dog racing and permitting and
conducting pari-mutuel wagering under the provisions of this
article shall, in addition to the daily license tax required
under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of the pari-mutuel pools, five percent of the next fifty thousand dollars of the pari-mutuel pools, six percent of the next one hundred thousand dollars of the pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of the pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: PROVIDED, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundredths of one percent in fiscal year one thousand nine hundred ninety-one; two tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts deducted shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund". The purpose of the fund is to promote better breeding, training track facilities and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to participate and be eligible to receive an award or purse through the fund, the registered greyhound owner must have an appropriate license from the Racing Commission to race in West Virginia. The registered greyhound dam at the time of breeding must be wholly or solely owned or leased by a bona fide resident or residents of West Virginia. The accredited West Virginia whelped greyhound must be wholly or solely owned by a bona fide resident or residents of this state. To qualify as a bona fide resident of West Virginia, a registered greyhound
A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the State of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this state on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The Racing Commission shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing Commission for purses for stake races, training track facilities, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped dogs, owned by residents of this state under rules promulgated by the Racing Commission. The Racing Commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the Racing Commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound.

The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia Greyhound Breeding Development fund monthly.
The total amount of the fund available for the owners' awards shall be distributed according to the ratio of points earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements. The point value at all greyhound tracks shall be the same as approved by the Racing Commission to be effective April 1, 2007. The West Virginia Greyhound Owners and Breeders Association shall submit a list of any additions or deletions to the registry of accredited West Virginia whelped greyhounds on the first of each month. The Racing Commission shall not require anyone to be a member of a particular association in order to participate in the West Virginia Greyhound Breeding Development Fund.

The registered greyhound owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the Racing Commission for a percentage of his or her dog's earnings to be paid directly to the registered greyhound owner or owners of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's achievements.

In no event shall points earned at a meet held at a track which did not make contributions to the West Virginia Greyhound Breeding Development Fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year: Provided, That not more than two million dollars from the balance in the purse supplemental fund shall be used for the construction and maintenance of two dog training track facilities if such be approved by the Racing Commission: Provided, however, That not more than one million dollars
may be allocated for the construction and maintenance of each training track: Provided further, That both training track facilities must be located in West Virginia. The West Virginia Racing Commission shall be authorized to promulgate rules governing dog training tracks: Provided further, That the Racing Commission shall (1) provide a process in its rules for competitive bidding of the construction or maintenance, or both, of the training tracks, and (2) set standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

In an effort to further promote the breeding of quality West Virginia whelped greyhounds, a bonus purse supplement shall be established in the amount of fifty thousand dollars per annum, to be paid in equal quarterly installments of twelve thousand five hundred dollars per quarter using the same method to calculate and distribute these funds as the regular supplemental purse awards. This bonus purse supplement is for three years only, commencing on the first day of July, one thousand nine hundred ninety-three, and ending the thirtieth day of June, one thousand nine hundred ninety-six. This money would come from the current existing balance in the greyhound development fund.

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: Provided, That each pari-mutuel track shall have one juvenile and one open stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for accredited West Virginia whelped greyhounds per race card: Provided, however, That sufficient dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West Virginia Racing Commission by the first day of July each year shall establish and announce the minimum number of accredited West Virginia whelped greyhounds that greyhound racing
kennels at West Virginia dog tracks must have on their racing active list during the calendar year following such action. The minimum number may vary from dog track to dog track. The minimum number shall be established after consultation with the West Virginia Greyhound Owners and Breeders Association and kennel owners and operators. Factors to be considered in establishing this minimum number shall be the number of individually registered accredited West Virginia whelped greyhounds whelped in the previous two years. The number of all greyhounds seeking qualification at each West Virginia dog track, the ratio of active running greyhounds to housed number of greyhounds at each West Virginia dog track, and the size and number of racing kennels at each West Virginia dog track. Any greyhound racing kennel not having the minimum number of accredited West Virginia whelped greyhounds determined by the West Virginia Racing Commission on their active list shall only be permitted to race the maximum allowable number on the active list less the number of accredited West Virginia whelped greyhounds below the established minimum number. Consistent violations of this minimum requirement may be reviewed by the Racing Commission and may constitute cause for denial or revocation of a kennel's racing license. The Racing Commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the "administration, promotion and educational and capital improvement account". The Racing Commission is authorized to expend the moneys deposited in the administration, promotion and educational and capital improvement account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development
Provided, That beginning with fiscal year one thousand nine hundred ninety-five and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion and education. The commission shall make an annual report to the Legislature on the status of the administration, promotion and education account, including the previous year's expenditures and projected expenditures for the next year.

The Racing Commission, for the fiscal year one thousand nine hundred ninety-four only, may expend up to thirty-five thousand dollars from the West Virginia greyhound breeding development fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the Racing Commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the Racing Commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.
AN ACT to amend and reenact §18A-4-7c of the Code of West Virginia, 1931, as amended, relating to requiring county boards filling summer school program positions to give employment preference to professional educators who are regularly employed on a full-time basis.

Be it enacted by the Legislature of West Virginia:

That §18A-4-7c of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7c. Summer employment of professional educators.

1 A county board shall hire professional educators for positions in summer school programs in accordance with section thirty-nine, article five, chapter eighteen of this code or section seven-a of this article, as applicable, except that a professional educator who is regularly employed by the county board on a full-time basis shall be given employment preference over applicants who are not regularly employed by the county board on a full-time basis.
AN ACT to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to competency and recertification testing for service personnel; and establishing a recertification testing schedule for school bus operators.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

(a) The State Board of Education shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.
(1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

(2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards a uniform means of determining whether school service personnel who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both. Applicants may take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally.

(1) The performance test for all classifications and categories other than bus operator is administered by an employee of the county board or an employee of a multicounty vocational school that serves the county at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county.

(2) A standard passing score is established by the State Department of Education for each test and is used by county boards.
(3) The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title.

(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and may not be required to take the competency test again.

(d) An applicant who fails to achieve a passing score is given other opportunities to pass the competency test when making application for another vacancy within the classification category.

(e) Competency tests are administered to applicants in a uniform manner under uniform testing conditions. County boards are responsible for scheduling competency tests, notifying applicants of the date and time of the one day of training prior to taking the test, and the date and time of the test. County boards may not use a competency test other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, the employee is excused from work to take the competency test without loss of pay.

(g) A minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests.
(h) Competency tests are used to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

(i) Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee is considered qualified for the classification title even though that employee no longer holds that classification.

(j) The requirements of this section do not alter the definitions of class titles as provided in section eight of this article or the procedure and requirements of section eight-b of this article.

(k) Notwithstanding any other provision of this code to the contrary, the recertification test for a bus operator is administered as follows:

(1) For a bus operator with regular employee status and continuing contract status who has been employed less than five consecutive years, the test is administered biennially and may not be administered more frequently;

(2) For a bus operator with regular employee status and continuing contract status who has been employed at least five consecutive years, the test is administered every third year and may not be administered more frequently; and

(3) For a substitute bus operator or for a bus operator with regular employee status, but on a probationary contract, the test is administered annually.
AN ACT to amend and reenact §3-8-1, §3-8-1a, §3-8-4, §3-8-5 and §3-8-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-9-14 of said code, all relating to the regulation and control of elections, generally; legislative findings related to the particular characteristics of West Virginia which warrant regulation of non-broadcast media; defining terms; clarifying that statutory prohibitions and criminal provisions relating to corporate election communications apply only to express advocacy; clarifying offenses and penalties; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

That §3-8-1, §3-8-1a, §3-8-4, §3-8-5 and §3-8-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-9-14 of said code be amended and reenacted, all to read as follows:

Article
8. Regulation and Control of Elections.
9. Offenses and Penalties.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.
§3-8-1. Provisions to regulate and control elections.

1. The Legislature finds that:

2. (1) West Virginia’s population is 1,808,344, ranking 37th among the fifty states.

3. (2) State Senate districts have a population of approximately one hundred six thousand three hundred seventy-three, and the average Delegate district has a population of approximately thirty-one thousand, one hundred seventy-eight. The size of these districts is substantially smaller than the United States Senatorial and Congressional Districts.

4. (3) When the relatively small size of the State’s legislative and other voting districts is combined with the economics and typical uses of various forms of electioneering communication, history shows that non-broadcast media is and will continue to be a widely used means of making campaign related communications to target relevant audiences. Consequently, non-broadcast communications are prevalent during elections.

5. (4) Disclosure provisions are appropriate legislative weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions, and the ceilings imposed accordingly serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.
(5) Disclosure of expenditures serve a substantial governmental interest in informing the electorate and preventing the corruption of the political process.

(6) Disclosure by persons and entities that make expenditures for communications that expressly advocate the election or defeat of clearly identified candidates, or perform its functional equivalent, is a reasonable and minimally restrictive method of furthering First Amendment values by public exposure of the state election system.

(7) Failing to regulate non-broadcast media messages would permit those desiring to influence elections to avoid the principles and policies that are embodied in existing state law.

(8) The regulation of the various types of non-broadcast media embodied within the amendments enacted during the second extraordinary session of two thousand eight, in addition to broadcast media, is tailored to meet the circumstances found in the State of West Virginia.

(9) Non-broadcast media such as mass mailing, telephone banks and billboards have proven to be effective means of election communication in West Virginia. Broadcast, satellite and non-broadcast media have all been used to influence election outcomes.

(10) Mass mailing and telephone communications can be more effective campaign methods than broadcast media because such communications can be targeted to registered voters or historical voters in the particular district. In contrast, broadcasted messages reach all of the general public, including person ineligible to vote in the district.

(11) Mass mailings or telephone communications in the final days of a campaign can be particularly damaging to the public’s confidence in the election process because they reduce or make impossible an effective response.
(12) Identifying those funding mass mailing or telephone campaigns in the final days of a campaign may at least permit voters to evaluate the credibility of the message.

(13) In West Virginia, contributions up to the amounts specified in this article allow contributors to express their opinions, level of support and their affiliations.

(14) In West Virginia, campaign expenditures by entities and persons who are not candidates have been increasing. Public confidence is eroded when substantial amounts of such money, the source of which is hidden or disguised, is expended. This is particularly true during the final days of a campaign.

(15) In West Virginia, contributions to political organizations (defined in Section 527(e)(1) of the Internal Revenue Code of 1986) substantially larger than the amounts permitted to be received by a candidate’s political committee have been recorded and are considered by the legislature to be large contributions.

(16) Independent expenditures intended to influence candidates’ campaigns in the State are increasingly utilizing non-broadcast media to support or defeat candidates.

(17) Identification of persons or entities funding political advertisements assists in enforcement of the contribution and expenditure limitations established by this article and simply informs voters of the actual identities of persons or entities advocating the election or defeat of candidates.

(18) Identification of persons or entities funding political advertisements allows voters to evaluate the credibility of the message contained in the advertisement.

(19) Disclosure of the identity of persons or entities funding political communications regarding candidates bolsters the right of listeners to be fully informed.
(b) Political campaign contributions, receipts and expenditures of money, advertising, influence and control of employees, and other economic, political and social control factors incident to primary, special and general elections shall be regulated and controlled by the provisions of this article and other applicable provisions of this chapter.

§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

(1) "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

(2) "Billboard" means a commercially available outdoor advertisement, sign or similar display regularly available for lease or rental to advertise a person, place or product.

(3) "Broadcast, cable or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system or satellite system.

(4) "Candidate" means an individual who:

(A) Has filed a certificate of announcement under section seven, article five of this chapter or a municipal charter;

(B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

(C) Has been named to fill a vacancy on a ballot; or
(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(5) "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(6) "Clearly identified" means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as "the Governor," "your Senator" or "the incumbent" or through an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate for Governor" or "the Republican candidate for Supreme Court of Appeals."

(7) "Contribution" means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: Provided, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.
55 (8) "Corporate political action committee" means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

56 (9) "Direct costs of purchasing, producing or disseminating electioneering communications" means:

57 (A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs and postage; or

58 (B) The cost of airtime on broadcast, cable or satellite radio and television stations, the costs of disseminating printed materials, establishing a telephone bank, studio time, use of facilities and the charges for a broker to purchase airtime.

59 (10) "Disclosure date" means either of the following:

60 (A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications; or

61 (B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications.

62 (11) "Election" means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate
or elect candidates for public office. For purposes of this article, each primary, general, special or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

(12) (A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertising, or published in any newspaper, magazine or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate: Provided, That for purposes of the general election of two thousand eight the amendments to this article shall be effective the first day of October, two thousand eight.

(B) "Electioneering communication" does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: Provided, That a
news story disseminated through a medium owned or controlled by a political party, political committee or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) Activity by a candidate committee, party executive committee or caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five of this article or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: Provided, That independent expenditures by a party executive committee or caucus committee or a political action committee required to be reported pursuant to subsection (b), section two of this article are not exempt from the requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;
(vi) A statement or depiction by a membership organization, in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(13) “Expressly advocating” means any communication that:

(A) Uses phrases such as “vote for the Governor,” “re-elect your Senator,” “support the Democratic nominee for Supreme Court,” “cast your ballot for the Republican challenger for House of Delegates,” “Smith for House,” “Bob Smith in '04,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidates, “reject the incumbent,” or communications of campaign slogans or individual words, that in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc. which say “Smith’s the One,” “Jones '06,” “Baker”; or

(B) When considered in its entirety, the communication can only be interpreted by a reasonable person as advocating
the election or defeat of one or more clearly identified candidates because:

(i) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(ii) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates.

(14) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(15) "Fund-raising event" means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(16) “Independent expenditure” means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate’s authorized political committee or a political party committee or its agents.

Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the
criteria for an independent expenditure is considered a
contribution.

(17) "Mass mailing" means a mailing by United States
mail, facsimile or electronic mail of more than five hundred
pieces of mail matter of an identical or substantially similar
nature within any thirty-day period. For purposes of this
subdivision, substantially similar includes communications
that contain substantially the same template or language, but
vary in non-material respects such as communications
customized by the recipient's name, occupation, or
geographic location.

(18) "Membership organization" means a group that
grants bona fide rights and privileges, such as the right to
vote, to elect officers or directors and the ability to hold
office, to its members and which uses a majority of its
membership dues for purposes other than political purposes.
"Membership organization" does not include organizations
that grant membership upon receiving a contribution.

(19) "Name" means the full first name, middle name or
initial, if any, and full legal last name of an individual and the
full name of any association, corporation, committee or other
organization of individuals, making the identity of any person
who makes a contribution apparent by unambiguous
reference.

(20) "Person" means an individual, partnership,
committee, association and any other organization or group
of individuals.

(21) "Political action committee" means a committee
organized by one or more persons for the purpose of
supporting or opposing the nomination or election of one or
more candidates. The following are types of political action
committees:
(A) A corporate political action committee, as that term is defined by subdivision (8) of this section;

(B) A membership organization, as that term is defined by subdivision (18) of this section;

(C) An unaffiliated political action committee, as that term is defined by subdivision (29) of this section.

(22) "Political committee" means any candidate committee, political action committee or political party committee.

(23) "Political party" means a political party as that term is defined by section eight, article one of this chapter or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

(24) "Political party committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

(25) "Political purposes" means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

(26) "Targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by ten thousand or more individuals in the state in
the case of a candidacy for statewide office and five hundred
or more individuals in the district in the case of a candidacy
for the Legislature.

(27) "Telephone bank" means telephone calls that are
targeted to the relevant electorate, other than telephone calls
made by volunteer workers, regardless of whether paid
professionals designed the telephone bank system, developed
calling instructions or trained volunteers.

(28) "Two-year election cycle" means the 24-month
period that begins the day after a general election and ends on
the day of the subsequent general election.

(29) "Unaffiliated political action committee" means a
political action committee that is not affiliated with a
corporation or a membership organization.

§3-8-4. Treasurers and financial agents; written designation
requirements.

(a) No person may act as the treasurer of any political
action committee or political party committee supporting,
aiding or opposing the nomination, election or defeat of any
candidate for an office encompassing an election district
larger than a county unless a written statement of
organization, on a form to be prescribed by the Secretary of
State, is filed with the Secretary of State at least twenty-eight
days before the election at which that person is to act as a
treasurer and is received by the Secretary of State before
midnight, eastern standard time, of that day or, if mailed, is
postmarked before that hour. The form shall include the
name of the political committee; the name of the treasurer;
the mailing address, telephone number and e-mail address, if
applicable, of the committee and of the treasurer if different
from the committee information; the chairman of the
committee; the affiliate organization, if any; type of
committee affiliation, as defined in subdivisions (21) and
(24), section one-a of this article, if any; and whether the committee will participate in statewide, county or municipal elections. The form shall be certified as accurate and true and signed by the chairman and the treasurer of the committee: Provided, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as the treasurer for any candidate for nomination or election to any statewide office, or to any office encompassing an election district larger than a county or to any legislative office unless a written statement designating that person as the treasurer or financial agent is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: Provided, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(c) No person may act as treasurer of any committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, except legislative candidates, or as the financial agent for a candidate for the nomination or election to any other office, unless a written statement designating him or her as the treasurer or financial agent is filed with the clerk of the county commission at least twenty-eight days before the election at which he or she is to act and is received before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: Provided, That a change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this section, a filing designating a treasurer for a state or county political executive committee may be made
anytime before the committee either accepts or spends funds. Once a designation is made by a state or county political executive committee, no additional designations are required under this section until a successor treasurer is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee's account. This written request shall be filed with either the Secretary of State or the clerk of the county commission as provided by subsections (a), (b) and (c) of this section.

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

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

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement:
(1) Of all financial transactions, whenever the total exceeds five hundred dollars, which have taken place before the last Saturday in March, to be filed within six days thereafter and annually whenever the total of all financial transactions relating to an election exceeds five hundred dollars;

(2) Of all financial transactions which have taken place before the fifteenth day preceding each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the fifteenth day;

(3) Of all financial transactions which have taken place before the thirteenth day after each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the thirteenth day; and

(4) Of all financial transactions, whenever the total exceeds five hundred dollars or whenever any loans are outstanding, which have taken place before the forty-third day preceding the general election day, to be filed within four business days after the forty-third day.

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

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

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article
twenty-one-a, chapter nineteen of this code are required to file only the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the primary election: Provided, That during the election in the year two thousand eight, the statements required by this subsection shall be filed immediately prior to and after the general election.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) Notwithstanding any provision of section two-b of this article, no officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may pay, give, lend or authorize to be paid, given or lent any money or other thing of value belonging to the corporation for the purpose of expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, to any candidate, financial agent, political committee or other person. No person may solicit or receive any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation.

(b)(1) The provisions of this section do not prohibit a corporation from:

(A) Directly communicating with its stockholders and executive or administrative personnel and their families on any subject: Provided, That the communication is not by newspapers of general circulation, radio, television or billboard advertising likely to reach the general public;

(B) Conducting nonpartisan registration and get-out-the-vote campaigns aimed at its stockholders and executive or administrative personnel and their families;
(C) Soliciting, through any officer, agent or person acting on behalf of the corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees; and

(D) Corporations may make disbursements for political purposes, as such are defined by the provisions of subdivision (25), subsection (a), section one-a of this article, that do not expressly advocate for the election or defeat of a clearly identified candidate. A disbursement for political purposes is permissible if it:

(i) Does not reference an election, candidacy, political party, opposing candidate or voting by the general public;

(ii) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and

(iii) Focuses on a legislative, executive, or judicial matter or issue which either:

(I) Urges a candidate to take a particular position or action with respect to the matter or issue; or

(II) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or

(iv) Proposes a commercial transaction, such as purchase of a book, video, or other product or service, or attendance (for a fee) at a film exhibition or other event.

(2) It is unlawful for:

(A) A separate segregated fund to make a primary or other election contribution or expenditure by using money or
anything of value secured: (i) By physical force, job
discrimination or financial reprisal; (ii) by the threat of force,
job discrimination or financial reprisal; (iii) as a condition of
employment; or (iv) in any commercial transaction;

(B) Any person soliciting a stockholder or executive or
administrative personnel and members of their families for a
contribution to a separate segregated fund to fail to inform
the person solicited of the political purposes of the separate
segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a
contribution to a separate segregated fund to fail to inform
the person solicited at the time of the solicitation of his or her
right to refuse to contribute without any reprisal;

(D) A corporation or a separate segregated fund
established by a corporation: (i) To solicit contributions to
the fund from any person other than the corporation's
stockholders and their families and its executive or
administrative personnel and their families; or (ii) to
contribute any corporate funds;

(E) A corporation or a separate segregated fund
established by a corporation to receive contributions to the
fund from any person other than the corporation's
stockholders and their immediate families and its executive
or administrative personnel and their immediate families;

(F) A corporation to engage in job discrimination or to
discriminate in job promotion or transfer because of an
employee's failure to make a contribution to a separate
segregated fund;

(G) A separate segregated fund to make any contribution,
directly or indirectly, in excess of one thousand dollars in
connection with or on behalf of any campaign for nomination
or election to any elective office in the state or any of its
86 subdivisions, or in connection with or on behalf of any
87 committee or other organization or person engaged in
88 furthering, advancing, supporting or aiding the nomination or
89 election of any candidate for any such office;

90 (H) A corporation to pay, give or lend or to authorize
91 payment, giving or lending of any moneys or other things of
92 value belonging to the corporation to a separate segregated
93 fund for any purpose. This provision does not prohibit a
94 separate segregated fund from using the property, real or
95 personal, facilities and equipment of a corporation solely to
96 establish, administer and solicit contributions to the fund,
97 subject to the rules of the State Election Commission as
98 provided in subsection (d) of this section: Provided, That
99 any such corporation shall also permit any group of its
100 employees represented by a bona fide political action
101 committee to use the real property of the corporation solely
102 to establish, administer and solicit contributions to the fund
103 of the political action committee, subject to the rules of the
104 State Election Commission promulgated in accordance with
105 said subsection. No corporation may use its property, real or
106 personal, facilities, equipment, materials or services for the
107 purpose of expressly advocating the election or defeat of a
108 clearly identified candidate for state, district, county or
109 municipal office.

110 (3) For the purposes of this section, the term "executive
111 or administrative personnel" means individuals employed by
112 a corporation who are paid on a salary rather than hourly
113 basis and who have policy-making, managerial, professional
114 or supervisory responsibilities.

115 (c) Any person or corporation violating any provision of
116 this section is guilty of a misdemeanor and, on conviction,
117 shall be fined not more than ten thousand dollars. No
118 corporation may reimburse any person the amount of any fine
119 imposed pursuant to this section.
(d) To ensure uniform administration and application of the provisions of this section and of those of the Federal Election Campaign Act Amendments of 1976 relating to corporate contributions, the State Election Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 2 U.S.C. §441b.

(e) In addition to the powers and duties set forth in article one-a of this chapter, the State Election Commission has the following powers and duties:

1. To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

2. To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

3. To involve the aid of any circuit court in the execution of its subpoena power.

4. To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(f) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(g) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State
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152 Election Commission and shall remain undisclosed except upon an indictment by a grand jury.

154 (h) Any person who discloses the fact of any complaint, investigation or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction, shall be fined not less than one thousand dollars, nor more than five thousand dollars, and shall be imprisoned in jail not less than six months nor more than one year.

160 (i) The amendments to this section enacted during the second extraordinary session of two thousand eight are intended to conform to the existing proscription to constitutionally permissible limits and not to create a new offense or offenses.

165 (j) The effective date of the amendments to this section enacted during the second extraordinary legislative session of two thousand eight shall be the first day of October, two thousand eight.

ARTICLE 9. OFFENSES AND PENALTIES

§3-9-14. Unlawful acts by corporations; penalties.

1 (a) Except as provided in section eight, article eight of this chapter, any corporation which shall, by its officers, agents or otherwise, offer, give or use, or cause to be offered, given or used, or place or cause to be placed, in the possession, under the control or at the disposal of another, to be offered, given or used, directly or indirectly, money or other thing of value, for the purpose of expressly advocating the election or defeat of a clearly identified candidate for a state, district, county or municipal office, it shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five thousand nor more than twenty thousand dollars for every such offense, at the discretion of the jury.
(b) As used in this section, the terms “clearly identified,” and “expressly advocating” shall have the meaning ascribed thereto by the provisions of section one-a, article eight of this chapter.

(c) The amendments to this section enacted during the second extraordinary session of two thousand eight are intended to conform the existing proscription to constitutionally permissible limits and not to create a new offense or offenses.

(d) The effective date of the amendments to this section enacted during the second extraordinary legislative session of two thousand eight shall be the first day of October, two thousand eight.

CHAPTER 14

(H.B. 215- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]

[Passed June 25, 2008; in effect from passage.]  
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §10-1-5 of the Code of West Virginia, 1931, as amended, relating to term of office for members of library boards of directors.

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 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 §5-5-2 of the Code of West Virginia, 1931, as amended, relating to annual incremental salary increases to certain state employees based on years of service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-2. Granting incremental salary increases based on years of service.

(a) Every eligible employee with three or more years of service shall receive an annual salary increase equal to sixty dollars times the employee’s years of service. In each fiscal year and on the first day of July, each eligible employee shall receive an annual increment increase of sixty dollars for that fiscal year.

(b) Every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on the first day of July in any fiscal year is entitled to the annual salary increase equal to sixty dollars times the
employee's years of service, where he or she has not in a
previous fiscal year received the benefit of an increment
omputation. Thereafter, the employee shall receive a single
annual increment increase of sixty dollars for each
subsequent fiscal year.

(c) These incremental increases are in addition to any
across-the-board, cost-of-living or percentage salary
increases which may be granted in any fiscal year by the
Legislature.

(d) This section shall not be construed to prohibit other
pay increases based on merit, seniority, promotion or other
reason, if funds are available for the other pay increases:
Provided, That the executive head of each spending unit shall
first grant the mandated increase in compensation in this
section to all eligible employees prior to the consideration of
any increases based on merit, seniority, promotion or other
reason.

CHAPTER 16

(H.B. 216- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §5-5-6 of the Code of West Virginia,
1931, as amended, relating to payments to certain state
employees for unused sick days; clarifying the formula for
"daily rate of pay"; creating the State Employee Sick Leave
Fund; and requiring the Secretary of the Department of
Administration to promulgate rules related to reimbursement
for payments made to employees whose salaries are funded in whole or in part by a source other than the General Revenue Fund.

_Be it enacted by the Legislature of West Virginia:_

That §5-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.**

§5-5-6. Payment for unused sick leave.

(a) Every eligible employee, as defined in section one of this article, who is entitled upon retirement to credit his or her accrued annual and sick leave for extended insurance coverage as provided in section thirteen, article sixteen of this chapter, and who has accumulated at least sixty-five days of unused sick leave may be paid, at his or her option, for unused sick leave in an amount of days as designated by the employee not to exceed the number of sick leave days that would reduce an employee’s sick leave balance to less than fifty days. The employee shall be paid at a rate equal to one quarter of their usual rate of daily pay during that calendar year. The “daily rate of pay” of an employee paid a monthly salary is calculated by multiplying the monthly salary by twelve and dividing that number by the number of workdays for that calendar year. As used in this section, “workday” does not include weekends. Any payment for unused sick leave may not be a part of final average salary computation.

(b) Payment for unused sick leave may be made only once per fiscal year on either the pay day immediately following the first full pay period in July or the first full pay period in December. Payments shall be made out of the fund established in subsection (e) of this section.
(c) Any eligible employee opting to receive payment in exchange for unused sick leave must contract, in a form to be prescribed by the Department of Administration, agreeing to reimburse the fund for the amount exchanged plus twelve percent per annum if the employee elects to separate from employment within sixty months of the date of the exchange pursuant to subsection (a) of this section. The Department of Administration shall pursue collection of the obligation, either by itself, or by contracting with a collection agency. For purposes of this section, “separation” does not include separation from employment by death or retirement, but does refer to any other manner in which employment may be terminated.

(d) Payments shall be made in the order that eligible employees apply for the payments so long as funds are available. In the event the fund is insufficient to pay all employees who have applied for payment in a fiscal year, employees who do not receive payment are eligible for payment in the next fiscal year, are not required to reapply and shall receive payment in the order in which they first applied, unless the employee chooses to withdraw the application prior to the next fiscal year.

(e) Effective the first day of July, two thousand eight, there is created a special revenue account within the State Treasury to be known as the State Employee Sick Leave Fund. The fund shall consist of moneys appropriated by the Legislature, moneys deposited into the fund in accordance with administrative rules of the Department of Administration, and any interest or other return to moneys in the fund. The fund shall be administrated by the Secretary of the Department of Administration.

(f) The secretary shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this section. The rules shall include, but not
be limited to, provisions for the application process and a rule
authorizing the secretary to obtain reimbursement, where
available and appropriate, to the State Employee Sick Leave
Fund from any spending unit for a pro rata share of payments
made under the provisions of this section to any employee
whose salary is paid, in whole or in part, from a funding
source other than the General Revenue Fund.

(g) Each spending unit, as defined in section one of this
article, shall verify to the secretary whether an employee is
eligible for payment under this section, shall verify the
funding source or sources of the employee’s salary, and shall
verify the total number of unused sick leave days for all
employees at least once per year. The secretary shall
maintain sick leave records for all spending units. All sick
leave days for which an employee is paid as provided in this
section shall be deducted from the employee’s sick leave
balance by the secretary and the secretary shall verify to each
spending unit the amount of days that have been deducted
from an employee’s sick leave balance. An employee shall
not be permitted to reacquire any sick leave days for which
he or she received payment under the provisions of this
section.

CHAPTER 17

(H.B. 211- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed June 25, 2008; in effect ninety days from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §61-3-49 of the Code of West
Virginia, 1931, as amended, relating generally to records and
reports of scrap metal purchasers; amending the definition of
scrap metal to include catalytic converters; exempting certain purchasers of vehicles and replacement catalytic converters for vehicles from the reporting requirements of this section; and providing for criminal penalties.

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

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY**

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

1 (a) For the purposes of this section, the following terms have the following meanings.

3 (1) “Business registration certificate” has the same meaning ascribed to it in section two, article twelve, chapter eleven of this code.

6 (2) “Purchaser” means any person in the business of purchasing scrap metal or used auto parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto parts.

11 (3) “Scrap metal” means any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, a catalytic converter or any materials derived from a catalytic converter, or steel railroad track and track material.

15 (b) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:
(1) The full name, permanent home and business addresses, and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character and weight of the scrap metal purchased; and

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan, or taken on consignment.

c) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell said scrap metal; and

(2) A photocopy of a valid driver’s license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government: Provided, That, if the purchaser has a copy of the seller’s valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

d) It is unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (b) and (c) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding
Provided, That the purchaser retains and makes available for review consistent with subsection (f) of this section the contract, bill of sale, or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: Provided, however, That the purchaser may redact any pricing or other commercially sensitive information from said contract, bill of sale, or similar documentation before making it available for inspection.

(e) No purchaser of scrap metal may knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

(f) Within thirty days of the effective date of the amendment and reenactment of this section during the second extraordinary session of the Legislature in two thousand seven, the West Virginia State Police shall make available a standard form purchasers of scrap metal may use to record all the information required under subsections (b) and (c) of this section.

(g) Using the form authorized under subsection (f) above, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser’s place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser’s regular business hours, by any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property: Provided, That in lieu of the purchaser keeping the records at their place of business, the purchaser shall file the records with the local detachment of the State Police and with the chief of police of the municipality or the
sheriff of the county wherein he or she is transacting business within seventy-two hours of completion of the purchase. The records shall be retained by the State Police and the chief of police of the municipality or the sheriff for a period of not less than three years.

(h) To the extent otherwise permitted by law, any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property may accompany a law-enforcement officer upon the premises of a purchaser in the execution of a valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(i) Upon the entry of a final determination and order by a court of competent jurisdiction, scrap metal found to have been misappropriated, stolen or taken under false pretenses may be returned to the proper owner of such material.

(j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.

(k) Nothing in this section applies to a purchaser of a vehicle on which a catalytic converter is installed, a purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter or a motor vehicle on which a catalytic converter is installed, for personal, family, household, or business use.

(l) Any person who knowingly or with fraudulent intent violates any provision of this section, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon
conviction of a first offense thereof, shall be fined not less than one thousand dollars nor more than three thousand dollars; upon conviction of a second offense thereof, shall be fined not less than two thousand dollars and not more than four thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense thereof shall be fined not less than three thousand dollars and not more than five thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held by that person and state the date said cancellation shall take effect.

CHAPTER 18

(H.B. 218- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-14C-48, all relating to establishing the average wholesale price of motor fuel for the two thousand nine calendar year for purposes of calculating the rate of Motor Fuel Excise Tax; creating the Motor Fuel Excise Tax Shortfall Reserve Fund; providing for the transfer of
moneys from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund; providing for the termination of the reserve fund; and requiring the Commissioner of Highways to submit reports to the Joint Committee on Government and Finance.

*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 said code be amended by adding thereto a new section, designated §11-14C-48, all to read as follows:

**ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

§11-14C-5. Taxes levied; rate.

§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.

(b) *Determination of average wholesale price.* --
18 (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: Provided, however, That for calendar year two thousand nine, the average wholesale price of motor fuel shall not exceed the average wholesale price of motor fuel for calendar year two thousand eight as determined pursuant to the notice filed by the Tax Commissioner with the Secretary of State on the twenty-first day of November, two thousand seven and published in the state register on the thirtieth day of November, two thousand seven.

(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 drain 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,

(a) There is hereby created in the State Treasury a special fund to be known and designated as the "Motor Fuel Excise Tax Shortfall Reserve Fund" to be administered by the Tax Commissioner for the purposes provided by this section. The fund shall consist of moneys transferred to the general revenue fund pursuant to appropriation of the Legislature. At the end of each fiscal year, during the fund’s existence, the moneys in the fund shall not expire to the general fund, but shall remain available for expenditure during the ensuing fiscal year. The fund shall terminate on the first day of February, two thousand ten. Any moneys remaining in the fund on that termination date shall be transferred to the general revenue fund. No provision of this section may be construed to require funding for the purposes of this section in excess of amounts transferred to the fund pursuant to appropriation of the Legislature.

(b) Determination of motor fuel excise tax revenue shortfall for the fiscal year ending the thirtieth day of June, two thousand eight. --

(1) Shortfall for the fiscal year ending the thirtieth day of June, two thousand eight. -- On the thirtieth day of June, two thousand eight, or as soon thereafter as is practicable, the Tax Commissioner shall determine the amount of the annual motor fuel excise tax revenue shortfall that occurred for the fiscal year ending on the thirtieth day of June, two thousand eight.

(2) Transfer for annual shortfall for the fiscal year ending the thirtieth day of June, two thousand eight. — On or before the first day of August, two thousand eight, the Tax
Commissioner shall transfer moneys equal to the lesser of twenty million dollars or the amount of the motor fuel excise tax revenue shortfall that occurred for the fiscal year ending on the thirtieth day of June, two thousand eight from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund.

(c) Monthly shortfalls for the period of July, two thousand eight to December, two thousand nine. -- Beginning on the thirty-first day of July, two thousand eight and on the last day of each month thereafter until, and including, the thirty-first day of December, two thousand nine, or as soon after the last day of each month as is practicable, the Tax Commissioner shall determine the amount of the monthly motor fuel excise tax revenue shortfall that occurred for each month. No such determination shall be made for any month ending after the thirty-first day of December, two thousand nine.

(1) Transfer for monthly shortfall. -- Within thirty days after making the determination of the monthly motor fuel excise tax revenue shortfall that occurred for each month, the Tax Commissioner shall transfer moneys in an amount equal to the amount of the motor fuel excise tax revenue shortfall that occurred for each month from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund: Provided, That the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund in the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers shall not exceed the lesser of twenty million dollars or the balance remaining in the Motor Fuel Excise Tax Shortfall Reserve Fund. No such transfer shall be made that is attributable to any month beginning after the thirty-first day of December, two thousand nine: Provided, however, That transfers attributable to the reconciliation for the period beginning the first day of July, two thousand nine to the
thirty-first day of December, two thousand nine mandated by paragraph (3) of this subsection shall be made, if required.

(2) **Annual reconciliation.** — On the thirtieth day of June, two thousand nine, or as soon thereafter as is practicable, the Tax Commissioner shall determine the amount of the annual motor fuel excise tax revenue shortfall that occurred for the fiscal year ending on the thirtieth day of June, two thousand nine.

(A) **Transfer for annual reconciliation for the fiscal year ending on the thirtieth day of June, two thousand nine.** — The amount of the annual motor fuel excise tax revenue shortfall that occurred for the fiscal year ending on the thirtieth day of June, two thousand nine shall be compared to the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund over the same fiscal year through total aggregate monthly transfers. The resulting difference is the reconciliation amount.

(B) **Net Shortfall.** — If the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund for the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers is less than the amount of the annual motor fuel excise tax revenue shortfall that occurred over the same fiscal year, then on or before the first day of August, two thousand nine, an amount of money equal to the reconciliation amount shall be transferred by the Tax Commissioner from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund: *Provided,* That the sum of the reconciliation amount subject to transfer and the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund in the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers shall not exceed the lesser of twenty million dollars or the amount remaining in the Motor Fuel Excise Tax Shortfall Reserve Fund.
(C) Net Overage. -- If the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund for the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers is greater than the amount of the annual motor fuel excise tax revenue shortfall that occurred over the same annual period, then moneys equal to the reconciliation amount shall be offset against amounts that would have otherwise been transferred by the Tax Commissioner from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund under this section in the next succeeding fiscal year beginning on the first day of July, two thousand nine, and moneys transferred in the fiscal year beginning on the first day of July, two thousand nine accordingly decrease.

(3) Transfer for reconciliation for the period beginning the first day of July, two thousand nine to the thirty-first day of December, two thousand nine. -- The amount of the annual motor fuel excise tax revenue shortfall that occurred for the period beginning on the first day of July, two thousand nine through the thirty-first day of December, two thousand nine shall be compared to the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund over the same period through total aggregate monthly transfers. The resulting difference is the reconciliation amount for the period beginning the first day of July, two thousand nine to the thirty-first day of December, two thousand nine.

(A) Net Shortfall. -- If the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund for the period beginning on the first day of July, two thousand nine through the thirty-first day of December, two thousand nine through total aggregate monthly transfers is less than the amount of the motor fuel excise tax revenue shortfall that occurred over the same period, then on or before the first day of February, two
thousand ten, moneys equal to the reconciliation amount for
the period beginning the first day of July, two thousand nine
to the thirty-first day of December, two thousand nine shall
be transferred by the Tax Commissioner from the Motor Fuel
Excise Tax Shortfall Reserve Fund to the State Road Fund:
Provided, That the sum of the reconciliation amount subject
to transfer and the total amount of moneys transferred from
the Motor Fuel Excise Tax Shortfall Reserve Fund to the
State Road Fund in the period beginning on the first day of
July, two thousand nine through the thirty-first day of
December, two thousand nine through total aggregate
monthly transfers shall not exceed the lesser of twenty
million dollars or the amount remaining in the Motor Fuel
Excise Tax Shortfall Reserve Fund.

(B) Net Overage. -- If the total amount of moneys
transferred from the Motor Fuel Excise Tax Shortfall Reserve
Fund to the State Road Fund for the period beginning on the
first day of July, two thousand nine through the thirty-first
day of December, two thousand nine through total aggregate
monthly transfers is greater than the amount of the annual
motor fuel excise tax revenue shortfall that occurred over the
same period, then moneys equal to the reconciliation amount
for the period beginning the first day of July, two thousand
nine to the thirty-first day of December, two thousand nine
shall remain in the State Road Fund for expenditure as
provided by law.

(d) Definitions. --

(1) “Calendar year” means the year beginning on the first
day of January, and ending on the thirty-first day of
December.

(2) “Motor fuel excise tax revenue shortfall” means the
official West Virginia state revenue estimate for motor fuel
excise tax revenues for a designated period minus the amount
of motor fuel excise tax collected for the same period:
Provided, That if the motor fuel excise tax collected for the designated period is greater than the official West Virginia state revenue estimate for motor fuel excise tax revenues for the same period, the motor fuel excise tax revenue shortfall is zero for the period.

(e) Reporting. -- The Commissioner of Highways shall submit a report to the Joint Committee on Government and Finance not later than the last day of each month for the period of July, two thousand eight through December, two thousand nine providing an analysis of the financial status of the State Road Fund and funds for highway maintenance.

CHAPTER 19

(H.B. 210- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed June 26, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §18-7B-7a of the Code of West Virginia, 1931, as amended; to amend and reenact §18-7D-2, §18-7D-5, §18-7D-6, §18-7D-7 and §18-7D-9 of said code; and to amend said code by adding thereto a new section, designated §18-7D-12, all relating to the voluntary transfer of assets from the Teachers’ Defined Contribution Retirement System to the State Teachers Retirement System generally; providing option for certain rehired persons; providing a date for the transfer of assets of certain transferring members; providing a deadline for the payment required to receive full credit in the State Teachers Retirement System for service in the Teachers’ Defined Contribution Retirement System; establishing deadline for
providing notice of intent to retire for certain transferring members; providing that certain submissions of elections to transfer shall be counted; providing option to certain members misidentified; establishing requirements for repurchase of certain service in the State Teachers Retirement System by transferring members against whom a qualified domestic relations order has been entered; and clarifying that any transferring member shall be fully credited for the member’s years of service in the Teachers’ Defined Contribution Retirement System.

Be it enacted by the Legislature of West Virginia:

That §18-7B-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-7D-2, §18-7D-5, §18-7D-6, §18-7D-7 and §18-7D-9 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-7D-12, all to read as follows:

Article 7B. Teachers’ Defined Contribution Retirement System.

7D. Voluntary Transfer from Teachers’ Defined Contribution Retirement System to State Teachers Retirement System.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

1 The retirement system created and established in this article shall be closed and no new members accepted in the system after the thirtieth day of June, two thousand five.

2 Notwithstanding the provisions of sections seven and eight of this article, all persons who are regularly employed for full-time service as a member or an employee whose initial employment commences after the thirtieth day of June, two thousand five, shall become a member of the State Teachers’
9 Retirement System created and established in article seven-a of this chapter: Provided, That any person rehired after the thirtieth day of June, two thousand five, shall become a member of the Teachers’ Defined Contribution Retirement System created and established in this article, or of the Teachers Retirement System created and established in article seven-a of this chapter, depending upon which system he or she last contributed to while he or she was employed with an employer mandating membership and contributions to one of those plans: Provided, however, That a rehired person who thereby becomes a member of the Teachers’ Defined Contribution Retirement System may become a member of the Teachers Retirement System within the applicable time periods and upon meeting the requirements provided in article seven-d of this chapter: Provided further, That any person rehired after the thirty-first day of December, two thousand seven, who did not have at least one dollar in the Teachers Defined Contribution Retirement System on the thirty-first day of December, two thousand seven, and for whom the Teachers Defined Contribution Retirement System was the system to which he or she last contributed while employed by an employer who required membership and contributions to one of the two teachers retirement plans, shall, within ten days of returning to employment, affirmatively choose to reenter the Teachers Defined Contribution Retirement System or to become a contributing member of the Teachers Retirement System. Those rehired prior to the first day of July, two thousand eight, and who did not have at least one dollar in the Teachers Defined Contribution Retirement System on the thirty-first day of December, two thousand seven, as determined by the Consolidated Public Retirement Board, shall be permitted to voluntarily elect to transfer effective the first day of August, two thousand eight, upon written request to the Consolidated Public Retirement Board received no later than the fifteenth day of July, two thousand eight.
ARTICLE 7D.  VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§18-7D-2. Definitions.

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

1. "Actively contributing member of the Teachers’ Defined Contribution Retirement System” means a member of that retirement system who was actively contributing to the Teachers’ Defined Contribution Retirement System on the thirty-first day of December, two thousand seven.

2. “Actuarial Reserve” means the Actuarial Reserve Lump Sum Value of the additional service credit being purchased by a member so electing in accordance with the provisions of section six of this article.

3. “Actuarial Reserve Adjusted Salary” means either:

   (A) For a member with a full year service credit in the fiscal year ending the thirtieth day of June, two thousand seven, the member’s two thousand seven fiscal year salary increased by seven percent;

   (B) For a member with less than a full year service credit in the fiscal year ending the thirtieth day of June, two
thousand seven, the member’s two thousand seven fiscal year
salary annualized to a full year based on the partial year
service credit increased by seven percent; or

(C) For a member without service credit in the fiscal year
ending the thirtieth day of June, two thousand seven, the
member’s annualized contract salary in effect on the thirty-
first day of December, two thousand seven increased by
seven percent, or the member’s annual contract salary on the
date of rehire if after the thirty-first day of December, two
thousand seven.

(4) “Actuarial Reserve Benefit Date” means the first day
of the month coincident with or next following the date at
which the member attains the age of sixty, or the thirtieth day
of June, two thousand nine, whichever is later.

(5) “Actuarial Reserve Benefit Date Factors” mean the
actuarial lump sum value factors based on a life only annuity
starting on the Actuarial Reserve Benefit Date applying the
1983 Group Annuity Mortality Tables on a seventy-five
percent female and a twenty-five percent male blended
Unisex basis and interest at seven and one-half percent.

(6) “Actuarial Reserve Discount Factor” means the
annual discount factor applied for the period between the
thirtieth day of June, two thousand nine and the Actuarial
Reserve Benefit Date, if any. Such factor based on the State
Teachers Retirement System actuarial valuation assumptions
shall estimate the impact of mortality, disability, and
economic factors for such discount period by application of
a net four percent discount rate.

(7) “Actuarial Reserve Lump Sum Value” means a single
sum amount calculated as: A benefit of two percent
multiplied by the Defined Contribution Retirement System
service credit being purchased multiplied by the Actuarial
Reserve Adjusted Salary; such benefit multiplied by the
Actuarial Reserve Benefit Date Factors to determine the lump sum value multiplied by the Actuarial Reserve Discount Factor.

(8) "Affirmatively elect to transfer" means the voluntary execution and delivery to the Consolidated Public Retirement Board, by a member of the Teachers' Defined Contribution Retirement System of a document in a form prescribed by the board that irrevocably authorizes the board to transfer the member and all the member's assets in the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System: *Provided*, That delivery of the document to the Consolidated Public Retirement Board may be accomplished through submission of the document to the supervisor of a work site pursuant to section seven of this article: *Provided, however*, That any previous member of the state Teachers Retirement System who voluntarily elected to terminate his or her membership in the State Teachers Retirement System to become a member of the Teachers' Defined Contribution Retirement System and signed an irrevocable transfer request also may affirmatively elect to transfer notwithstanding the prior transfer request.

(9) "Assets" means all member contributions and employer contributions made on the member's behalf to the Defined Contribution Retirement System and earnings thereon, less any applicable fees as approved by the board: *Provided*, That if a member has withdrawn or cashed out any amounts, the amounts must have been repaid.

(10) "Board" means the Consolidated Public Retirement Board established in article ten-d, chapter five of this code, and its employees.

(11) "Date of transfer" means, in the event that sixty-five percent or more of the actively contributing members of the Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within
the period provided in section seven of this article, the first
day of July, two thousand eight: Provided, That for any
member whose election to transfer was received by the board
after the twelfth day of May, two thousand eight, but on or
before the twentieth day of May, two thousand eight, and has
not been certified as accepted by the board on or before the
effective date of the amendments to this section enacted
during the second extraordinary session of the Legislature,
two thousand eight, “date of transfer” means the first day of
August, two thousand eight.

(12) "Defined Contribution Retirement System" means
the Teachers' Defined Contribution Retirement System
established in article seven-b of this chapter.

(13) “Member” means any person who has an account
balance standing to his or her credit in the Teachers’ Defined
Contribution Retirement System.

(14) "Salary" means:

(A) For a member contributing to the Defined
Contribution Retirement System during the two thousand
seven fiscal year, the actual salary earned for the two
thousand seven fiscal year divided by the employment
service earned in the two thousand seven fiscal year.

(B) For a member not contributing to the Defined
Contribution Retirement System during the two thousand
seven fiscal year, the contract salary on the date of rehire.

(15) "State Teachers Retirement System" means the State
Teachers Retirement System established in article seven-a of
this chapter.

§18-7D-5. Conversion of assets from Defined Contribution
Retirement System to State Teachers Retirement
System; contributions; loans.
(a) If at least sixty-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, then the Consolidated Public Retirement Board shall transfer the members and all properties held in the Teachers’ Defined Contribution Retirement System’s Trust Fund in trust for those members who affirmatively elected to do so during that period to the State Teachers Retirement System, effective on the first day of July, two thousand eight: Provided, That the board shall, for any member whose election to transfer was received by the board after the twelfth day of May, two thousand eight, but on or before the twentieth day of May, two thousand eight, and has not been certified as accepted by the board on or before the effective date of the amendments to this section enacted during the second extraordinary session of the Legislature, two thousand eight, effectuate the transfer as provided in this subsection on the first day of August, two thousand eight.

(b) The board shall make available to each member a loan for the purpose of paying all or part of the Actuarial Reserve, or if available in accordance with the provisions of subsection (d), section six of this article, the one and one-half percent contribution for service in the Teachers’ Defined Contribution System to receive additional service credit in the State Teachers Retirement System for service in the Teachers’ Defined Contribution Retirement System pursuant to section six of this article. The loan shall be offered in accordance with the provisions of section thirty-four, article seven-a of this chapter.

(1) Notwithstanding any provision of this code, rule or policy of the board to the contrary, the interest rate on any loan may not exceed seven and one-half percent per annum. The total amount borrowed may not exceed forty thousand dollars: Provided, That the loan may not exceed the limitations of the Internal Revenue Code Section 72 (p).
(2) In the event a loan made pursuant to this section is used to pay the Actuarial Reserve or the one and one-half percent contribution, as the case may be, the board shall make any necessary adjustments at the time the loan is made.

(3) The board shall make this loan available until the thirtieth day of June, two thousand nine.

(c) The board shall develop and institute a payroll deduction program for repayment of the loan established in this section.

(d) If at least sixty-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article:

(1) As of the first day of July, two thousand eight, or the first day of August, two thousand eight, as the case may be, the transferred members’ contribution rate becomes six percent of his or her salary or wages; and

(2) All transferred members who work one hour or more and who make a contribution into the State Teachers Retirement System on or after the first day of July, two thousand eight, are governed by the provisions of article seven-a of this chapter, subject to the provisions of this article.

(e) Subject to the provisions of subdivision (1) of this subsection, if a member has withdrawn or cashed out part of his or her assets, that member will not receive credit for those moneys cashed out or withdrawn. The board shall make a determination as to the amount of credit a member loses based on the periods of time and the amounts he or she has withdrawn or cashed out, which shall be expressed as a loss of service credit.
A member may repay those amounts he or she previously cashed out or withdrew, along with interest as determined by the board, and receive the same credit as if the withdrawal or cash-out never occurred. To receive full credit for the cashed-out or withdrawn amounts being repaid to the State Teachers Retirement System, the member also shall pay the actuarial reserve, or the one and one-half percent contribution, as the case may be, pursuant to section six of this article.

The loan provided in this section is not available to members to repay previously cashed out or withdrawn moneys.

If the repayment occurs five or more years following the cash-out or withdrawal, the member also shall repay any forfeited employer contribution account balance along with interest determined by the board.

Notwithstanding any provision of subsection (e) to the contrary, if a member has cashed out or withdrawn any of his or her assets after the last day of June, two thousand three, and that member chooses to repurchase that service after the thirtieth day of June, two thousand eight, the member shall repay the previously distributed amounts and any applicable interest to the State Teachers Retirement System.

Any service in the State Teachers Retirement System a member has before the date of the transfer is not affected by the provisions of this article.

The board shall take all necessary steps to see that the voluntary transfers of persons and assets authorized by this article do not affect the qualified status with the Internal Revenue Service of either retirement plan.
§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.

(a) Any member who has affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article whose assets have been transferred from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is, depending upon the percentage of actively contributing members affirmatively electing to transfer, entitled to service credit in the State Teachers Retirement System in accordance with the provisions of subsections (c) or (d) of this section.

(b) Any such member who has made withdrawals or cash-outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.

(c) If at least sixty-five percent but less than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, for any member of the Defined Contribution Retirement System who elects to transfer to the State Teachers Retirement System, his or her service credit in the State Teachers Retirement System is determined as follows:

(1) For any member affirmatively electing to transfer, the member's State Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;
(2) To receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, transferring members shall have the option to pay into the State Teachers Retirement System the Actuarial Reserve, as defined in section two of this article, by no later than the thirtieth day of June, two thousand nine.

(d) If at least seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, for any member of the Defined Contribution Retirement System who elects to transfer to the State Teachers Retirement System, his or her service credit in the State Teachers Retirement System is determined as follows:

(1) For any member affirmatively electing to transfer, the member's State Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;

(2) To receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, members who affirmatively elected to transfer shall pay into the State Teachers Retirement System a one and one-half percent contribution by no later than the thirtieth day of June, two thousand nine. This contribution shall be calculated as one and one-half percent of the member's estimated total earnings for which assets are transferred, plus interest of four percent per annum accumulated from the date of the member's initial participation in the Defined Contribution Retirement System.
(A) For a member contributing to the Defined Contribution Retirement System at any time during the two thousand eight fiscal year and commencing membership in the State Teachers Retirement System on the first day of July, two thousand eight, or the first day of August, two thousand eight, as the case may be:

(i) The estimated total earnings shall be calculated based on the member's salary and the member's age nearest birthday on the thirtieth day of June, two thousand eight;

(ii) This calculation shall apply both an annual backward salary scale from that date for prior years' salaries and a forward salary scale for the salary for the two thousand eight fiscal year.

(B) The calculations in paragraph (A) of this subdivision are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System Actuarial Valuation as of the first day of July, two thousand seven, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(e) All service previously transferred from the State Teachers Retirement System to the Teachers' Defined Contribution Retirement System is considered Teachers' Defined Contribution Retirement System service for the purposes of this article.

(f) Notwithstanding any provision of this code to the contrary, the retirement of a member who becomes eligible to retire after the member's assets are transferred to the State Teachers Retirement System pursuant to the provisions of this article may not commence prior to the first day of September, two thousand eight: Provided, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year two thousand eight during the calendar year two thousand eight.
unless the member has provided a written notice to his or her county board of education by the first day of July, two thousand eight, of his or her intent to retire.

§18-7D-7. Period for affirmative election to transfer; board may contract for professional services.

(a) The board shall provide the members of the Teachers' Defined Contribution Retirement System an opportunity to voluntarily execute and deliver to the Consolidated Public Retirement Board, or its designee, a written document in a form prescribed by the board that irrevocably authorizes the board to transfer the member and all the member's assets in the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System in accordance with the provisions of this article.

(b) If at least sixty-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System:

   (1) The Consolidated Public Retirement Board shall, for each member who affirmatively elected to transfer as provided in this section, transfer the assets held in the Teachers' Defined Contribution Retirement System's Trust Fund in trust for that member to the State Teachers Retirement System on the first day of July, two thousand eight: Provided, That the board shall, for each member whose election to transfer was received by the board after the twelfth day of May, two thousand eight, but on or before the twentieth day of May, two thousand eight, and has not been certified as accepted by the board on or before the effective date of the amendments to this section enacted during the second extraordinary session of the Legislature, two thousand eight, transfer the assets of such member as provided in this subdivision on the first day of August, two thousand eight;
(2) On the first day of July, two thousand eight, or the first day of August, two thousand eight, as the case may be, each member who so elected becomes a member of the State Teachers Retirement System and after working one or more hours and contributing to the State Teachers Retirement System is entitled to the benefits of the State Teachers Retirement System; and

(3) Each such member is governed by the provisions of the State Teachers Retirement System subject to the provisions of this article.

(c) If fewer than sixty-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System, the transfers described in this section shall not occur.

(d) Any person who has one dollar or more in assets in the Teachers' Defined Contribution Retirement System on the last day of December, two thousand seven, may and is eligible to affirmatively elect to transfer to the State Teachers Retirement System as provided in this section. For purposes of this article:

(1) The tabulation of the percentage required for transfer as required in this article shall only include documents affirmatively electing to transfer submitted under the provisions of this subsection by those who are actively contributing members of the Teachers' Defined Contribution Retirement System as that term is defined in section two of this article; and

(2) Notwithstanding the opportunity to submit documents affirmatively electing to transfer extended by this article to members other than those who are actively contributing members of the Teachers' Defined Contribution Retirement System, there shall be no duty or other obligation on the part
of the board to provide any education, information or notice regarding matters contained in this article to members who are not actively contributing members of the Teachers' Defined Contribution Retirement System regarding any matter described in this article, nor any right on the part of those other members to receive the same.

(e) Notwithstanding any other provision of this code to the contrary, the board may do all things necessary and convenient to maintain the Teachers' Defined Contribution Retirement System and the State Teachers Retirement System during the transitional period and may retain the services of the professionals it considers necessary to do so. The board may also retain the services of professionals necessary to:

(1) Assist in the preparation of educational materials;

(2) Assist in the educational process;

(3) Assist in the process for submission of the documents whereby members may affirmatively elect to transfer; and

(4) Ensure compliance with all relevant state and federal laws.

(f) Due to the time constraints inherent in the initial processes established for the submission of documents affirmatively electing to transfer set forth in this article in specific, and due to the nature of the professional services required by the Consolidated Public Retirement Board in general, the provisions of article three, chapter five-a of this code, do not apply to any materials, contracts for any actuarial services, investment services, legal services or other professional services authorized under the provisions of this article and the provisions of article six, chapter twenty-nine do not apply to any employment of or contracting for personnel by the board for the purposes of implementing the provisions of this article.
(g) The submission of the documents whereby members may affirmatively elect to transfer may be held through any method the board determines is in the best interest of the members: Provided, That for members of the Teachers' Defined Contribution Retirement System, the submission of the documents whereby those members elect to transfer shall be pursuant to the procedure established by the Consolidated Public Retirement Board set forth in subsection (j) of this section.

(h) The period for submission of the documents whereby members may affirmatively elect to transfer shall begin not later than the first day of April, two thousand eight. The board shall ascertain the results of the submissions not later than the last day of May, two thousand eight. The board shall certify the results of the submissions to the Governor, the Legislature and the members not later than the fifth day of June, two thousand eight.

(i) The submission period terminates and elections to transfer may not be accepted from a member after the twelfth day of May, two thousand eight, subject to the following:

1. If elections to transfer are permitted through the mail, any submission postmarked later than the twelfth day of May, two thousand eight, is void and may not be counted: Provided, That notwithstanding the provisions of this subdivision, any submission received by the board on or before the twentieth day of May, two thousand eight shall be counted;

2. If elections to transfer are delivered to a supervisor on selection day or on or before the ninth day of May, two thousand eight, any submission postmarked or deposited with a commercial carrier later than the thirteenth day of May, two thousand eight, is void and may not be counted: Provided, That notwithstanding the provisions of this subdivision, any submission received by the board on or before the twentieth
day of May, two thousand eight shall be counted: *Provided, however,* That delivery by mail must be by certified mail, return receipt requested or delivery by commercial courier that requires written confirmation by the board of delivery;

(3) The fifth day of May, two thousand eight, is selection day upon which each county board and superintendent shall provide an opportunity in each school within the county for members of the Teachers' Defined Contribution System to affirmatively elect to transfer.

(j) The Consolidated Public Retirement Board shall collaborate with the state superintendent, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education to establish a procedure whereby all actively contributing members of the Teachers' Defined Contribution Retirement System may deliver to the Consolidated Public Retirement Board or its designee the written document authorizing transfer through a supervisor at each work site where any contributing member of the Defined Contribution Retirement System is employed. The procedure shall include at least the following:

(1) The supervisor at each work site is responsible for collecting the written documents authorizing the transfer from all actively contributing members of the Teachers' Defined Contribution Retirement System employed at the work site who choose to submit the written document. The supervisor shall record the receipt of all written documents authorizing transfer, shall direct the member submitting the written document to initial a receipt log and shall issue a receipt to the member submitting the written document.

(2) On and after the sixth day of May, two thousand eight, but on or before the ninth day of May, two thousand eight, the supervisor at the work site shall make reasonable efforts to contact verbally and in writing all actively contributing members of the Teachers' Defined Contribution
Retirement System employed at the work site that have not submitted their written documents as of that date to remind those members of the upcoming deadline for submitting their written document authorizing transfer: Provided, That failure of the supervisor to make contact with any of those members shall not be a basis for a cause of action to allow a member to transfer after the period provided in this section or for any other cause of action.

(3) The supervisor at each work site shall forward all of the written documents to the Consolidated Public Retirement Board, or its designee, through certified mail, or delivery by commercial courier that requires written confirmation by the board of delivery, no later than the thirteenth day of May, two thousand eight: Provided, That notwithstanding the provisions of this subdivision, any submission received by the board on or before the twentieth day of May, two thousand eight, shall be counted. The work site supervisor shall inform the Consolidated Public Retirement Board of all of the written documents received each day so that the board, or its designee, can record which members of the Teachers' Defined Contribution Retirement System have submitted their written documents authorizing transfer pursuant to subsection (k) of this section.

(4) For the purposes of this subdivision, the principal of a school with any of grades prekindergarten through twelve is the work site supervisor. For the purposes of this subdivision, for any work site under the jurisdiction of the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education, the human resource administrator or other designee may be considered the work site supervisor. In any case where the person who is the work site supervisor is in question, the state board, the Chancellor for Higher Education or the Chancellor for Community and Technical College Education, whichever entity has jurisdiction over the work site, shall designate the supervisor.
(5) The state board, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education shall ascertain the names of all work site supervisors under their jurisdiction and transmit a list of the names of the work site supervisors to the Consolidated Public Retirement Board on or before the thirty-first day of March, two thousand eight.

(k) The Consolidated Public Retirement Board, or its designee, shall record the receipt of all written documents authorizing the transfer so that it knows the percentage of contributing members of the Teachers' Defined Contribution Retirement System that have submitted the written documents by work site and by county.

(l) Notwithstanding any other provision of this article to the contrary, any member of the Teachers Defined Contribution Retirement System who was erroneously identified by the employer as being a member of the Teachers Retirement System and who did not have at least one dollar in the Teachers Defined Contribution Retirement System on the thirty-first day of December, two thousand seven and therefore was denied an opportunity to select transfer as determined by the Consolidated Public Retirement Board, shall be provided promptly with an opportunity to select membership in the Teachers Retirement System. The Consolidated Public Retirement Board is authorized to establish procedures and time periods to provide notice, education, selection opportunity and transfer for these members to correct the erroneous assignment to the Teachers Retirement System.

§18-7D-9. Qualified domestic relations orders.

Any transferring member having a qualified domestic relations order against his or her defined contribution account is allowed to repurchase service in the State Teachers Retirement System. The member shall repay any moneys previously distributed to the alternate payee along with the
interest as set by the board. To receive full credit for the
previous distribution to the alternate payee pursuant to a
qualified domestic relations order being repaid to the State
Teachers Retirement System, the member shall also pay the
Actuarial Reserve, or the one and one-half percent
collection, as the case may be, pursuant to section six of
this article. The member shall repay by the last day of June,
two thousand fourteen. The provisions of this section are
void and of no effect if there is no transfer from the Teachers'
Defined Contribution Retirement System to the State
Teachers Retirement System. An alternate payee is not,
solely as a result of that status, a member of either the
Teachers' Defined Contribution Retirement System or the
State Teachers Retirement System for any purpose under the
provisions of this article and no interest held by the alternate
payee is transferred to the State Teachers Retirement System
pursuant thereto.

§18-7D-12. Transferees’ eligibility to retire.

1 (a) For purposes of determining a transferring member’s
eligibility for retirement in accordance with section twenty-
five, article seven-a of this chapter, any member who has
affirmatively elected to transfer to the State Teachers
Retirement System pursuant to the provisions of this article
shall be fully credited for his or her years of service in the
Teachers’ Defined Contribution Retirement System:
Provided, That the calculation of any transferring member’s
service credit in the State Teachers’ Retirement System
following the transfer shall be determined in accordance with
the provisions of section six of this article.

12 (b) For purposes of this section, “years of service” shall
mean all years as a member of the Teachers’ Defined
Contribution Retirement System and, in addition thereto,
credits for any prior service, if any: Provided, That service
previously withdrawn by a member may not be included in
“years of service” unless repaid.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §48-28A-101, §48-28A-102, §48-28A-103, §48-28A-104, §48-28A-105, §48-28A-106, §48-28A-107, §48-28A-108, §48-28A-109 and §48-28A-110, all relating to the creation and implementation of the Address Confidentiality Program; providing for administration by the Secretary of State; providing address confidentiality for victims of domestic abuse, sexual assault or stalking; providing eligibility and application requirements for participation in program; requiring contents of an application be kept confidential; establishing a process for certification of applicants as program participants; providing for cancellation of a participant’s certification; providing for use of a designated confidential address; allowing disclosure of actual residential or mailing address under certain circumstances; establishing criminal penalties for the filing of false information or breaching the program’s confidentiality; limiting the Secretary of State’s liability in certain circumstances; and requiring the Secretary of State propose legislative and emergency rules.
Be it enacted by the Legislature of West Virginia:


ARTICLE 28A. ADDRESS CONFIDENTIALITY PROGRAM.


The Legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, or stalking frequently find it necessary to establish a new address in order to prevent their assailants or probable assailants from finding them. The purpose of this article is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic abuse, sexual assault, or stalking; to enable interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic abuse, sexual assault, or stalking; and to enable state and local agencies to accept an address designated by the Secretary of State by a program participant as a substitute for a residential or mailing address.

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking, and who has been designated by the respective agency or nonprofit program, and trained, accepted and registered by the Secretary of State to assist individuals in the completion of program participation applications.

2. "Designated address" means the address assigned to a program participant by the Secretary of State pursuant to section one hundred three of this article.

3. "Mailing address" means an address that is recognized for delivery by the United States Postal Service.

4. "Program" means the Address Confidentiality Program established by this article.

5. "Program participant" means a person certified by the Secretary of State to participate in the program.

6. "Residential Address" means a residential street, school or work address of an individual, as specified on the individual's application to be a program participant under this article.

§48-28A-103. Address Confidentiality Program.

(a) On or after the effective date of the enactment of this article, the Secretary of State shall create an Address Confidentiality Program to be staffed by full time employees who have been subjected to a criminal history records search.
(b) Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the Secretary of State to have a designated address assigned by the Secretary of State.

(c) The Secretary of State may approve an application only if it is filed with the office of the Secretary of State in the manner established by rule and on a form prescribed by the Secretary of State. A completed application must contain the following information:

(1) The application preparation date, the applicant's signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant;

(2) A designation of the Secretary of State as agent for purposes of service of process and for receipt of certain first-class mail;

(3) The mailing address where the applicant may be contacted by the Secretary of State or a designee and the telephone number or numbers where the applicant may be contacted by the Secretary of State or the Secretary of State's designee; and

(4) A residential or mailing address or both types of addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household.

(d) Upon receipt of a properly completed application, the Secretary of State may certify the applicant as a program participant. A program participant is certified for a period of four years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The Secretary of State shall send notification of a lapsing
certification and a reapplication form to a program participant at least four weeks prior to the expiration of the program participant's certification.

(e) The Secretary of State shall forward to the program participant first-class mail received at the program participant’s designated address.

(f) (1) An applicant may not file an application knowing that it:

(A) Contains false or incorrect information; or

(B) Falsely claims that disclosure of either the applicant's residential or mailing address or both types of addresses threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(A) Contains false or incorrect information; or

(B) Falsely claims that disclosure of either the applicant's residential or mailing address or both types of addresses threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(g) A person who violates the provisions of subsection (f) of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for a period of not more than one year.


Certification for the program may be canceled if one or more of the following conditions apply:
(1) If the program participant obtains a name change, unless the program participant provides the Secretary of State with documentation of a legal name change within ten business days of the name change;

(2) If there is a change in the residential address of the program participant from the one listed on the application, unless the program participant provides the Secretary of State with notice of the change in a manner prescribed by the Secretary of State; or

(3) The applicant or program participant violates subsection (f), section one hundred three of this article.

§48-28A-105. Use of designated address.

(a) Upon demonstration of a program participant's certification in the program, state and local agencies and the courts of this state shall accept the designated address as a program participant's address for the purposes of creating a new public record unless the Secretary of State has determined that:

(1) The agency or court has a bona fide statutory or administrative requirement for the use of the program participant's residential or mailing address, such that the agency or court is unable to fulfill its statutory duties and obligations without the program participant’s residential or mailing address; and

(2) The program participant's residential or mailing address will be used only for those statutory and administrative purposes, and shall be kept confidential, subject to the confidentiality provisions of section one hundred eight of this article.

(b) Notwithstanding the provisions of subsection (a) and upon the request of the Secretary of State, the Division of Motor Vehicles shall use the designated address for the
purposes of issuing a driver's license or identification card:

Provided, That the division of motor vehicles shall not be prohibited from collecting and retaining a program participant’s residential or mailing address or both addresses to be used only for statutory and administrative purposes. Any residential or mailing address of a program participant collected and retained pursuant to this subsection shall be kept confidential, subject to the provisions of section one hundred eight of this article.

(c) A designated address may be a post office box and may be used by a participant for voter registration purposes, as long as the Secretary of State has on file for the participant a residential and mailing address, as provided in section one hundred three of this article.

§48-28A-106. Disclosure to law enforcement and state agencies.

(a) The Secretary of State may make a program participant's residential or mailing address available for inspection or copying, under the following circumstances:

1. Upon request of a law-enforcement agency in the manner provided for by rule; or

2. Upon request of the head of a state agency or designee in the manner provided for by rule and upon a showing of a bona fide statutory or administrative requirement for the use of the program participant's residential or mailing address, such that the agency head or designee is unable to fulfill statutory duties and obligations without the program participant’s residential or mailing address.

§48-28A-107. Disclosure pursuant to court order or canceled certification.

(a) The Secretary of State shall make a program participant's residential or mailing address or both addresses
available for inspection or copying to a person identified in
a court order, upon receipt of a certified court order that
specifically requires the disclosure of a particular program
participant's residential or mailing address or both addresses
and the reasons for the disclosure; or

(b) The Secretary of State may make a program
participant's residential or mailing address or both addresses
available for inspection or copying if the program applicant
or participant’s certification has been canceled because the
applicant or program participant has violated subsection (f),
section one hundred three of this article.


A program participant's application and supporting
materials are not a public record and shall be kept
confidential by the Secretary of State. Any employee of any
agency or court who willfully breaches the confidentiality of
these records or willfully discloses the name, residential or
mailing address or both addresses of a program participant
in violation of the provisions of this article, shall be guilty of
a misdemeanor and, upon conviction thereof, shall be fined
not less than five hundred dollars nor more than one thousand
dollars or confined in jail not more than one year, or both
fined and confined.

§48-28A-109. Secretary of State; liability.

This article creates no liability upon the Secretary of
State for any transaction compromised by any illegal act or
inappropriate uses associated with this article.


The Secretary of State is hereby directed to propose
legislative rules and emergency rules implementing the
provisions of this article in accordance with the provisions of
article three, chapter twenty-nine-a of this code.
CHAPTER 2

(H.B. 209 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

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 Governor’s Office, fund 0101, fiscal year 2008, organization 0100, to the Department of Agriculture, fund 0131, fiscal year 2008, organization 1400, to the Department of Administration, Department of Administration - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, to the Department of Administration - West Virginia Public Employees Grievance Board, fund 0220, fiscal year 2008, organization 0219, to the Department of Administration - Real Estate Division, fund 0610, fiscal year 2008, organization 0233, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, to the Department of Commerce, Department of Commerce - Office of the Secretary, fund 0606, fiscal year 2008, organization 0327, to the Department of Education - State Department of Education, fund 0313, fiscal year 2008, organization 0402, to the Department of Education and the Arts, Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2008, organization 0431, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2008, organization 0432, to the Department of Health and Human Resources - Division of Health-Central Office, fund 0407, fiscal year 2008, organization 0506, to the Department of Health and Human...

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated the seventeenth day of August, two thousand seven, setting forth therein the cash balance as of the first day of July, two thousand seven; and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand eight; 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 eight; 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 eight, to fund 0101, fiscal year 2008, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

EXECUTIVE

5-Governor’s Office

(WV Code Chapter 5)

Fund 0101 FY 2008 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Surplus</td>
<td>097</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0131, fiscal year 2008, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

EXECUTIVE

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2008 Org 1400
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0186, fiscal year 2008, organization 0201, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF ADMINISTRATION

18-Department of Administration-
Office of the Secretary

Fund 0186 FY 2008 Org 0201

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0220, fiscal year 2008, organization 0219, be supplemented and amended by increasing an existing item of appropriation as follows:
Section 1. Appropriations of General Revenue.

DEPARTMENT OF ADMINISTRATION

24-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2008 Org 0219

Act-

ity

General

Revenue

Funds

Unclassified - Surplus ........ 097  $ 280,000

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0610, fiscal year 2008, organization 0233, be supplemented and amended by increasing an existing item of appropriation as follows:

DEPARTMENT OF ADMINISTRATION

32-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2008 Org 0233
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0256, fiscal year 2008, organization 0307, 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

36-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2008 Org 0307

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0606, fiscal year 2008, organization 0327, be supplemented and amended by increasing an existing item of appropriation and adding language as follows:
Section 1. Appropriations of General Revenue.

DEPARTMENT OF COMMERCE

42-Department of Commerce-
Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2008 Org 0327

<table>
<thead>
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<th>Activity</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified - Surplus</td>
</tr>
</tbody>
</table>

From the above appropriation for Unclassified - Surplus (fund 0606, activity 097), the following shall be funded: King Coal Highway Authority; Coal Field Expressway Authority; Coal Heritage Highway Authority; Coal Heritage Area Authority; Little Kanawha River Parkway; Midland Trail Scenic Highway Association; Shawnee Parkway Authority; Corridor G Highway Authority; and Corridor H Authority.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0313, fiscal year 2008, 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
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0294, fiscal year 2008, organization 0431, 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 AND THE ARTS

52-Department of Education and the Arts-
Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2008 Org 0431

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund
0293, fiscal year 2008, organization 0432, be supplemented
and amended by increasing existing items of appropriation as
follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF EDUCATION AND THE ARTS**

53-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2008 Org 0432

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<tr>
<td>097 Unclassified - Surplus</td>
<td>$ 190,000</td>
</tr>
<tr>
<td>677 Capital Outlay Repairs and Equipment - Surplus (R)</td>
<td>$ 6,100,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0407, fiscal year 2008, organization 0506, be supplemented and amended to read as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

61-Division of Health-Central Office
<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
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<td>General Revenue Funds</td>
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<td>517,798</td>
</tr>
<tr>
<td>Women, Infants and Children</td>
<td>65,000</td>
</tr>
<tr>
<td>Basic Public Health Services Support</td>
<td>3,348,475</td>
</tr>
<tr>
<td>Early Intervention</td>
<td>3,307,043</td>
</tr>
<tr>
<td>Cancer Registry</td>
<td>284,587</td>
</tr>
<tr>
<td>ABCA Tobacco Retailer</td>
<td></td>
</tr>
<tr>
<td>Education Program-Transfer</td>
<td>200,000</td>
</tr>
<tr>
<td>CARDIAC Project</td>
<td>470,000</td>
</tr>
<tr>
<td>State EMS Technical</td>
<td></td>
</tr>
<tr>
<td>Assistance</td>
<td>1,424,858</td>
</tr>
<tr>
<td>EMS Program for Children</td>
<td>50,686</td>
</tr>
<tr>
<td>Statewide EMS Program</td>
<td></td>
</tr>
<tr>
<td>Support (R)</td>
<td>940,286</td>
</tr>
<tr>
<td>Primary Care Centers-Mortgage Finance</td>
<td>796,718</td>
</tr>
<tr>
<td>Black Lung Clinics</td>
<td>198,646</td>
</tr>
<tr>
<td>Center for End of Life</td>
<td>250,000</td>
</tr>
<tr>
<td>Women’s Right to Know</td>
<td>40,000</td>
</tr>
<tr>
<td>Pediatric Dental Services</td>
<td>150,000</td>
</tr>
<tr>
<td>Vaccine for Children</td>
<td>438,437</td>
</tr>
<tr>
<td>Adult Influenza Vaccine</td>
<td>65,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Statewide EMS Program Support (fund 0407, activity 383) Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) and Assistance to Primary Health Care Centers Community Health Foundation (fund 0407, activity 845) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

Included in the above appropriation for State Trauma and Emergency Care Systems (activity 918), is $100,000 to initiate the consolidation of medical command centers.
From the Unclassified line item (activity 099), $50,000 shall be expended for the West Virginia Aids Coalition. Also included is the above appropriation for Unclassified, is an additional $100,000 for Human Papillomavirus (HPV) Education.

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

From the above appropriation for ABCA Tobacco Retailer Education Program-Transfer (activity 239), $200,000 shall be transferred to the Alcohol Beverage Control Administration (fund 7352, org 0708) for expenditure.

Included in the above appropriation for Primary Care Centers-Mortgage Finance is $50,000 for the mortgage payment for the Lincoln Primary Care Center, Inc.; $53,140 for the mortgage payment for the Monroe Health Center; $42,564 for the mortgage payment for Roane County Family Health Care, Inc.; $30,000 for the mortgage payment for the Tug River Health Association, Inc.; $48,000 for the mortgage payment for the Primary Care Systems (Clay); $20,000 for the mortgage payment for the Belington Clinic; $30,000 for the mortgage payment for the Tri-County Health Clinic; $15,000 for the mortgage payment for Valley Health Care (Randolph); $58,560 for the mortgage payment for Valley Health Systems, Inc. (Woman’s Place and Harts Health Clinic); $8,000 for the mortgage payment for Northern Greenbrier Health Clinic; $12,696 for the mortgage payment for the Women’s Care, Inc. (Putnam); $25,000 for the mortgage payment for the Preston-Taylor Community Health Centers, Inc.; $20,000 for the mortgage payment for the North Fork Clinic (Pendleton); $40,000 for the mortgage payment for the Pendleton Community Care; $38,400 for the mortgage payment for Clay-Battelle Community Health
Center; $33,600 for the mortgage payment for Mountaineer
Health Clinic in Paw Paw; $13,000 for the mortgage payment
for the St. George Medical Clinic; $28,000 for the mortgage
payment for the Bluestone Health Center; $45,000 for the
mortgage payment for Wheeling Health Right; $48,000 for
the mortgage payment for the Minnie Hamilton Health Care
Center, Inc.; $54,000 for the mortgage payment for the
Shenandoah Valley Medical Systems, Inc.; $45,000 for the
mortgage payment for the Change, Inc.; and $28,958 for the
mortgage payment for the Wirt County Health Services
Association.

From the above appropriation for State Aid to Local
Health Departments (activity 702) $20,000 shall be used,
along with any grants that may be obtained, for the purpose
of contracting with an independent consultant to conduct a
comprehensive study, administered by Local Health Inc., of
the revenues of the state’s local health departments to
develop a method for the distribution of state funds to local
health departments that will best serve the citizens of the
state.

Also included in the above appropriation for State Aid to
Local Health Departments is additional funding for salary
increases in amounts consistent with those provided to state
employees under appropriations made for that purpose in this
act.

From the above appropriation for Unclassified (activity
099), $50,000 is for Hospital Hospitality House of
Huntington.

And, That the total appropriation for the fiscal year
ending the thirtieth day of June, two thousand eight, to fund
0403, fiscal year 2008, organization 0511, be supplemented
and amended by increasing an existing line item and adding
language as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

65-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2008 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Unclassified - Surplus</td>
<td>097 $ 3,000,000</td>
</tr>
</tbody>
</table>

From the appropriation for Social Services (fund 0403, activity 195) an amount not to exceed $2,000,000 may be transferred to West Virginia Works Separate State College Program (fund 5467) and West Virginia Works Separate State-Two Parent Families Program (fund 5468) in an amount to be determined by the Secretary of the Department of Health and Human Resources.

The above appropriation for Unclassified - Surplus (fund 0403, activity 097) shall be transferred to the West Virginia Works Separate State College Program (fund 5467) and West Virginia Works Separate State Two-Parent Families Program (fund 5468) in an amount to be determined by the Secretary of the Department of Health and Human Resources.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0430, fiscal year 2008, organization 0601, be supplemented
and amended by adding a new item of appropriation and increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

66-Department of Military Affairs and Public Safety-
Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2008 Org 0601

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified - Surplus ......</td>
<td>097</td>
<td>$250,000</td>
</tr>
<tr>
<td>6a Interoperable Communication</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6b System - Surplus ...........</td>
<td>771</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

And, That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section one thereof, the following:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

BUREAU OF SENIOR SERVICES

88a-Bureau of Senior Services
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0596, fiscal year 2008, organization 0420, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

HIGHER EDUCATION

89-West Virginia Council for Community and Technical College Education-Control Account

Fund 0596 FY 2008 Org 0420

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund
0586, fiscal year 2008, organization 0442, be supplemented
and amended by increasing an existing item and adding a
new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

HIGHER EDUCATION

91-Higher Education Policy Commission-
System-
Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2008 Org 0442

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Surplus</td>
<td>097 $1,677,318</td>
</tr>
<tr>
<td>Marshall School of Medicine -</td>
<td>452 $2,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to
supplement the accounts in the budget act for the fiscal year
ending the thirtieth day of June, two thousand eight, by
providing for new items of appropriation to be established
therein and to supplement, amend, increase and add items of
appropriation in the aforesaid accounts for the designated
spending units for expenditure during the fiscal year two
thousand eight.
CHAPTER 3

(H.B. 210 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

AN ACT supplementing, amending and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2008, organization 0802, and the Department of Transportation, Division of Highways, fund 9017, fiscal year 2008, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated the seventeenth day of August, two thousand seven, setting forth therein the cash balances and investments as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It thus appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:
That the items of the total appropriation from the State Road Fund, to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2008, organization 0802, be amended and increased in the line item as follows:

TITLE II--APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

93-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24A)

Fund 9007 FY 2008 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$ 700,000</td>
</tr>
</tbody>
</table>

And that the items of the total appropriation from the State Road Fund, to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2008, organization 0803, be amended and increased in the line items as follows:

TITLE II--APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

94-Division of Highways
(WV Code Chapters 17 and 17C)

Fund 9017 FY 2008 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance</td>
<td>237 $37,728,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road</td>
<td>272 25,000,000</td>
</tr>
<tr>
<td>Maintenance</td>
<td>272 25,000,000</td>
</tr>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273 10,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>281 10,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and increase existing items in the aforesaid accounts for the designated spending units for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight.

CHAPTER 4

(H.B. 211 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand eight, to a new item of appropriation designated to the Department of Health and
Ch. 4] APPROPRIATIONS 2595

Human Resources, Division of Human Services - West Virginia Works Separate State College Program Fund, fund 5467, fiscal year 2008, organization 0511, to a new item of appropriation designated to the Department of Health and Human Resources, Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2008, organization 0511, to a new item of appropriation designated to the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, to a new item of appropriation designated to the Department of Revenue, Alcohol Beverage Control Administration - Wine Tax Administration Fund, fund 7087, fiscal year 2008, organization 0708, and to a new item of appropriation designated to the Bureau of Senior Services, Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2008, organization 0508, supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Health and Human Resources, Division of Human Services - West Virginia Works Separate State College Program Fund, fund 5467, fiscal year 2008, organization 0511, in the Department of Health and Human Resources, Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2008, organization 0511, in the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, in the Department of Revenue, Alcohol Beverage Control Administration - Wine Tax Administration Fund, fund 7087, fiscal year 2008, organization 0708, and in the Bureau of Senior Services, Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2008, organization 0508, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 

5 179a-Division of Human Services-

6 West Virginia Works Separate State College Program

7 Fund

8 (WV Code Chapter 9)

9 Fund 5467 FY 2008 Org 0511

10 Activity Other Funds

11

12

13 1 Unclassified - Total ......... 096 $ 1,700,000

14 And, That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

15 TITLE II--APPROPRIATIONS.

16 Sec. 3. Appropriations from other funds.

17 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
179b-Division of Human Services -

West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2008 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

And, That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

196a-Office of the Secretary -
State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2008 Org 0701

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total - Transfer</td>
<td>402</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total - Transfer shall be transferred to the Other Post-Employment Contribution Accumulation Fund (fund 2541, org 0232).
And, That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

215a-Alcohol Beverage Control Administration-
Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2008 Org 0708

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
<td>250,000</td>
</tr>
</tbody>
</table>

And, That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

BUREAU OF SENIOR SERVICES

221a-Bureau of Senior Services-
Community Based Service Fund
70  (WV Code Chapter 22)

71  Fund 5409 FY 2008 Org 0508

72

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>Total</td>
</tr>
</tbody>
</table>

75  The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending the thirtieth day of June, two thousand eight, by providing for new items of appropriation to be established therein to appropriate funds for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 5

(H.B. 212 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)

[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]

[Approved by the Governor on August 27, 2007.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand eight, to the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2008, organization 0314, to the Department of Revenue - Alcohol Beverage Control Administration, fund 7352, fiscal year 2008, organization 0708, and to the Public Service Commission, fund 8623, fiscal year 2008, organization 0926, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.
WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Commerce - Miners’ Health, Safety and Training Fund, fund 3355, fiscal year 2008, organization 0314, the Department of Revenue - Alcohol Beverage Control Administration, fund 7352, fiscal year 2008, organization 0708, and the Public Service Commission, fund 8623, fiscal year 2008, organization 0926, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, 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 eight, to fund 3355, fiscal year 2008, organization 0314, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

136-Miners’ Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2008 Org 0314

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099 $500,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 7352, fiscal year 2008, organization 0708, be supplemented and amended by increasing the total appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

217-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2008 Org 0708

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 8623, fiscal year 2008, organization 0926, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

230-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2008 Org 0926

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 6

(S.B. 2009 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand eight, to a new item of appropriation designated to the Department of Military Affairs and Public Safety - Fire Commission, fund 8819, fiscal year 2008, organization 0619, and to a new item of appropriation designated to the Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2008, organization 0913, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Military Affairs and Public Safety - Fire Commission, fund 8819, fiscal year 2008, organization 0619, and in the Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2008, organization 0913, available for expenditure during the fiscal year
ending the thirtieth day of June, two thousand eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

4 307a-Fire Commission

5 (WV Code Chapter 29)

6 Fund 8819 FY 2008 Org 0619

7 Activity Other Funds

8 1 Unclassified .............. 096 $ 65,200

And that chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

15 TITLE II--APPROPRIATIONS.
Sec. 6. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

314a-Board of Pharmacy

(WV Code Chapter 30)

Fund 8857 FY 2008 Org 0913.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>096 $ 155,122</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending the thirtieth day of June, two thousand eight, by providing for new items of appropriation to be established therein to appropriate funds for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 7

(S.B. 2011 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

AN ACT expiring funds to the balance of the Public Service Commission Fund, fund 8623, fiscal year 2008, organization
WHEREAS, The Governor finds that the account balance in the Public Service Commission Pipeline Safety Fund, fund 8624, fiscal year 2008, organization 0926, exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1. That the balance of the Public Service Commission Fund, fund 8623, fiscal year 2008, organization 0926, be increased by expiring to that fund four hundred thirty-nine thousand dollars from the Public Service Commission Pipeline Safety Fund, fund 8624, fiscal year 2008, organization 0926, to be available for expenditure during the fiscal year two thousand eight.

8. The purpose of this bill is to expire four hundred thirty-nine thousand dollars from the Public Service Commission Pipeline Safety Fund, fund 8624, fiscal year 2008, organization 0926, for the fiscal year ending the thirtieth day of June, two thousand eight, to be available for expenditure during the fiscal year two thousand eight.
AN ACT expiring funds to the balance of the State School Building Fund, fund 3957, fiscal year 2008, organization 0402, for the fiscal year ending the thirtieth day of June, two thousand eight, in the amount of one million two hundred ninety-three thousand six hundred ninety-six dollars from the School Building Authority, fund 3514, fiscal year 2008, organization 0402.

WHEREAS, The Governor finds that the account balance in the School Building Authority, fund 3514, fiscal year 2008, organization 0402, exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the State School Building Fund, fund 3957, fiscal year 2008, organization 0402, be increased by expiring to that fund one million two hundred ninety-three thousand six hundred ninety-six dollars from the School Building Authority, fund 3514, fiscal year 2008, organization 0402, to be available for expenditure during the fiscal year two thousand eight.

8 The purpose of this bill is to expire one million two hundred ninety-three thousand six hundred ninety-six dollars from the School Building Authority, fund 3514,
That §5-26-1, §5-26-2, §5-26-2a, §5-26-2b, §5-26-3, §5-26-4, §5-26-5, §5-26-6 and §5-26-8 of the Code of West Virginia, 1931, as amended, be repealed; that §18-5-18d of said code be repealed;
that §16-5K-2 and §16-5K-4 of said code be amended and reenacted; that §49-9-3 and §49-9-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §49-6C-1 and §49-6C-2, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.


1 Unless the context clearly otherwise indicates, as used in this article:

3 (a) “Bureau” means the Bureau for Children and Families within the Department of Health and Human Resources.

5 (b) "Council" means the Governor's Early Intervention Interagency Coordinating Council.

7 (c) "Department" means the Department of Health and Human Resources.

9 (d) "Early intervention services" means developmental services which:

12 (1) Are designed to meet the developmental needs of developmentally delayed infants and toddlers and the needs of the family related to enhancing the child's development;

16 (2) Are selected in collaboration with the parents;

19 (3) Are provided under public supervision in conformity with an individualized family service plan and at no cost to families;
(4) Meet the state's early intervention standards, as established by the Department of Health and Human Resources with the assistance of the Governor's Early Intervention Interagency Coordinating Council;

(5) Include assistive technology, audiology, audiology case management, family training, counseling and home visits, health services necessary to enable a child to benefit from other early intervention services, medical services only for diagnostic or evaluation purposes, nursing services, nutrition services, occupational therapy, physical therapy, psychological services, social work services, special instruction, speech-language pathology, vision and transportation; and

(6) Are provided by licensed or otherwise qualified personnel, including audiologists, family therapists, nurses, nutritionists, occupational therapists, orientation and mobility specialists, physical therapists, physicians, psychologists, social workers, special educators, speech-language pathologists and paraprofessionals appropriately trained and supervised.

(e) "Infants and toddlers with developmental delay" means children from birth to thirty-six months of age who need early intervention services for any of the following reasons:

(1) They are experiencing developmental delays, as measured by appropriate methods and procedures, in one or more of the following areas: Cognitive, physical, including visual and hearing, communicative, adaptive, social, language and speech, or psycho-social development or self-help skills; or

(2) They have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or
§16-5K-4. Interagency coordinating council.

(a) The Governor’s Early Intervention Interagency Coordinating Council is continued. The council is composed of at least fifteen members appointed by the Governor with additional ex officio members representing specific agencies serving infants and toddlers with developmental delays.

(b) The membership of the council shall consist of the following:

(1) At least three parents of children, ages birth through six years of age, who have developmental delays;

(2) At least three persons representative of the public or private service providers;

(3) At least one member of the House of Delegates recommended by the Speaker of the House of Delegates and one member of the Senate recommended by the Senate President;

(4) At least one person from higher education involved in training individuals to provide services under this article; and

(5) A representative of each of the agencies involved in the provision of or payment for early intervention services to infants and toddlers with developmental delays and their families.

(c) The council shall meet at least quarterly and in such place as it considers necessary.
(d) The council is responsible for the following functions:

1. To advise and assist the Department of Health and Human Resources in the development and implementation of early intervention policies;
2. To assist the department in achieving the full participation of all relevant state agencies and programs;
3. To collaborate with the Bureau for Children and Families in the coordination of early intervention services with other programs and services for children and families;
4. To assist the department in the effective implementation of a statewide system of early intervention services;
5. To assist the department in the resolution of disputes;
6. To advise and assist the department in the preparation of grant applications; and
7. To prepare and submit an annual report to the Governor, the Legislature and the United States Secretary of Education on the status of early intervention programs within the state.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6C. CHILDREN’S TRUST FUND.

§49-6C-1. Continuation and transfer of control of trust fund.

(a) The Children’s Fund, created for the sole purpose of awarding grants, loans and loan guarantees for child abuse and neglect prevention activities by enactment of chapter
twenty-seven, Acts of the Legislature, one thousand nine
hundred eighty-four, as last amended and reenacted by
chapter one hundred fifty-nine, Acts of the Legislature, one
thousand nine hundred ninety-nine, is hereby continued and
renamed the West Virginia Children’s Trust Fund:

Provided, That upon the effective date of the enactment of
this section during the second extraordinary session of the
Legislature in two thousand seven, the fund shall be
administered by the Commissioner of the Bureau for
Children and Families. Gifts, bequests or donations for this
purpose, in addition to appropriations to the fund, shall be
deposited in the State Treasury in a special revenue account
under the control of the Secretary of the Department of
Health and Human Resources or his or her designee.

(b) Each state taxpayer may voluntarily contribute a
portion of the taxpayer's state income tax refund to the
Children’s Trust Fund by designating the contribution on the
state personal income tax return form. The bureau shall
approve the wording of the designation on the income tax
return form. The State Tax Commissioner shall determine
by the first day of July of each year the total amount
designated pursuant to this subsection and shall report that
amount to the State Treasurer, who shall credit that amount
to the Children's Trust Fund.

(c) All interest accruing from investment of moneys in
the Children's Trust Fund shall be credited to the fund. The
Legislative Auditor shall conduct an audit of the fund before
the first day of July, two thousand eight, and at least every
three fiscal years thereafter.

d) Grants, loans and loan guarantees may be awarded
from the Children's Trust Fund by the Commissioner of the
Bureau for Children and Families for child abuse and
neglect prevention activities.
(e) Upon the effective date of the enactment of this section, all employees, records, responsibilities, obligations, assets and property, of whatever kind and character, of the Governor’s Cabinet on Children and Families are hereby transferred to the Bureau for Children and Families within the Department of Health and Human Resources, including, but not limited to, all rights and obligations held by the Governor’s Cabinet on Children and Families under any grants, loans or loan guarantees previously awarded from the Children’s Trust Fund.

(f) 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 Bureau for Children and Families within the Department of Health and Human Resources, 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 Health and Human Resources or other authorized official, a court of competent jurisdiction or by operation of law.

§49-6C-2. Family resource networks.

(a) “Family resource network” means a local community organization charged with service coordination, needs and resource assessment, planning, community mobilization and evaluation, and which has been recognized by the cabinet as having met the following criteria:

1 (1) Agreeing to a single governing entity;
(2) Agreeing to engage in activities to improve service systems for children and families within the community;

(3) Addressing a geographic area of a county or two or more contiguous counties;

(4) Having nonproviders, which include family representatives and other members who are not employees of publicly funded agencies, as the majority of the members of the governing body, and having family representatives as the majority of the nonproviders;

(5) Having representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency and the county school district, on the governing body;

(6) Accepting principles consistent with the cabinet’s mission as part of its philosophy.

(b) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.


(a) The Missing Children Information Clearinghouse is established under the West Virginia State Police. The State Police:

(1) Shall provide for the administration of the clearinghouse; and
(2) May promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

(b) The clearinghouse is a central repository of information on missing children and shall be used by all law-enforcement agencies in this state.

(c) The clearinghouse shall:

(1) Establish a system of intrastate communication of information relating to missing children;

(2) Provide a centralized file for the exchange of information on missing children and unidentified bodies of children within the state;

(3) Communicate with the National Crime Information Center for the exchange of information on missing children suspected of interstate travel;

(4) Collect, process, maintain and disseminate accurate and complete information on missing children;

(5) Provide a statewide toll-free telephone line for the reporting of missing children and for receiving information on missing children;

(6) Disseminate to custodians, law-enforcement agencies, the state Department of Education, the Bureau for Children and Families and the general public information that explains how to prevent child abduction and what to do if a child becomes missing;

(7) Compile statistics relating to the incidence of missing children within the state;
(8) Provide training materials and technical assistance to law-enforcement agencies and social services agencies pertaining to missing children; and

(9) Establish a media protocol for disseminating information pertaining to missing children.

(d) The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing children.

(e) The State Police may accept public or private grants, gifts and donations to assist in carrying out the provisions of this article.

§49-9-15. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of eleven members, who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway or exploitation of children or locating missing children;
(2) The Secretary of the Department of Health and Human Resources or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

(4) The State Superintendent of Schools or his or her designee;

(5) The Director of the Criminal Justice and Highway Safety Division or his or her designee; and

(6) The Commissioner of the Bureau for Children and Families or his or her designee.

(b) The Governor shall appoint the six council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the council are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the
council shall be designated by the Governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, runaway or exploitation of children or locating missing children. The term of the chair shall run concurrently with his or her term of office as a member of the council. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to article nine-a, chapter six of this code.

(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by section three of this article shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(f) The expenses of council members and the executive director shall be reimbursed from funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection (b), section seventeen of this article.

(g) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

(h) The executive director of the council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.
(i) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and to the Joint Committee on Government and Finance on or before the fifteenth day of December of each year.

CHAPTER 10

(Com. Sub. for S.B. 2005 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to amend and reenact §18B-1B-3 and §18B-1B-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18B-2B-5 of said code; to amend and reenact §18B-6-1 of said code; and to amend and reenact §18B-9-4 of said code, all relating to higher education generally; Higher Education Policy Commission; authorizing the Higher Education Policy Commission to convey real property; West Virginia Council for Community and Technical College Education; institutional boards of governors and institutional boards of advisors; providing for election of officers; terms of office; meetings; authorizing institutions to provide salary increases if funds are available for certain classified employees under certain circumstances; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18B-1B-3 and §18B-1B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 of
said code be amended and reenacted; that §18B-2B-5 of said code be amended and reenacted; that §18B-6-1 of said code be amended and reenacted; and that §18B-9-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-3. Meetings and compensation.

(a) The commission shall meet as needed at the time and place specified by the call of the chairperson.

(b) The commission shall hold an annual meeting at the final, regularly scheduled meeting of each fiscal year for the purpose of electing officers. At the annual meeting, the commission shall elect from its members appointed by the Governor a chairperson and other officers as it may consider necessary or desirable. All officers are elected from the citizen appointees. The chairperson and other officers are elected for a one-year term commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year. The chairperson of the commission may serve no more than four consecutive terms as chair.

(c) Members of the commission shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

(d) A majority of the members constitutes a quorum for conducting the business of the commission.

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a, article one of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards of Marshall University and West Virginia University, respectively. To that end, the commission has the following powers and duties relating to the institutions under its jurisdiction:

1. Develop, oversee and advance the public policy agenda pursuant to section one, article one-a of this chapter to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a, article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two, article one-a of this chapter and to develop and implement the master plan described in section nine of this article for the purpose of accomplishing the mandates of this section;

2. Develop, oversee and advance the implementation jointly with the council of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

   A. Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

   B. Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;
(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter; and

(D) Incorporate the plan for strategic funding to strengthen capacity for support of community and technical college education established by the West Virginia Council for Community and Technical College Education pursuant to the provisions of section six, article two-b of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education systems as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;
(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to:

(A) The Governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions pursuant to section two, article one-a of this chapter;

(10) Annually report to the Legislature and to the Legislative Oversight Commission on Education Accountability during the January interim meetings on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to,
progress in meeting goals stated in the compacts and
progress of the institutions and the higher education system
as a whole in meeting the goals and objectives set forth in
section one-a, article one of this chapter;

(B) An analysis of enrollment data collected pursuant to
section one, article ten of this chapter and recommendations
for any changes necessary to assure access to high-quality,
high-demand education programs for West Virginia
residents;

(C) The priorities established for capital investment
needs pursuant to subdivision (11) of this subsection and the
justification for such priority;

(D) Recommendations of the commission for statutory
changes needed to further the goals and objectives set forth
in section one-a, article one of this chapter;

(11) Establish a formal process for identifying needs for
capital investments and for determining priorities for these
investments for consideration by the Governor and the
Legislature as part of the appropriation request process. It
is the responsibility of the commission to assure a fair
distribution of funds for capital projects between the
commission and the council. To that end the commission
shall take the following steps:

(A) Receive the list of priorities developed by the
council for capital investment for the institutions under the
council’s jurisdiction pursuant to subsection (b), section six,
article two-b of this chapter;

(B) Place the ranked list of projects on the agenda for
action within sixty days of the date on which the list was
received;
(C) Select a minimum of three projects from the list submitted by the council to be included on the ranked list established by the commission. At least one of the three projects selected must come from the top two priorities established by the council;

(12) Maintain guidelines for institutions to follow concerning extensive capital project management except the governing boards of Marshall University and West Virginia University are not subject to the provisions of this subdivision as it relates to the state institutions of higher education known as Marshall University and West Virginia University. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the commission of any proposed capital project which has the potential to exceed one million dollars in cost. Such a project may not be pursued by an institution without the approval of the commission. An institution may not participate directly or indirectly with any public or private entity in any capital project which has the potential to exceed one million dollars in cost;

(13) Acquire legal services as are considered necessary, including representation of the commission, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(14) Employ a Chancellor for Higher Education pursuant to section five of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission
and the council, in accordance with the provisions of article
four of this chapter;

(16) Provide suitable offices in Charleston for the
chancellor, vice chancellors and other staff;

(17) Advise and consent in the appointment of the
presidents of the institutions of higher education under its
jurisdiction pursuant to section six of this article. The role
of the commission in approving an institutional president is
to assure through personal interview that the person selected
understands and is committed to achieving the goals and
objectives as set forth in the institutional compact and in
section one-a, article one of this chapter;

(18) Approve the total compensation package from all
sources for presidents of institutions under its jurisdiction,
as proposed by the governing boards. The governing boards
must obtain approval from the commission of the total
compensation package both when institutional presidents are
employed initially and afterward when any change is made
in the amount of the total compensation package;

(19) Establish and implement the policy of the state to
assure that parents and students have sufficient information
at the earliest possible age on which to base academic
decisions about what is required for students to be
successful in college, other post-secondary education and
careers related, as far as possible, to results from current
assessment tools in use in West Virginia;

(20) Approve and implement a uniform standard jointly
with the council to determine which students shall be placed
in remedial or developmental courses. The standard shall be
aligned with college admission tests and assessment tools
used in West Virginia and shall be applied uniformly by the
governing boards throughout the public higher education
system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the State Superintendent of Schools;

(21) Review and approve or disapprove capital projects as described in subdivision (11) of this subsection;

(22) Jointly with the council, develop and implement an oversight plan to manage systemwide technology such as the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and state institutions of higher education are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(23) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a bachelor’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that students may transfer and apply toward the
requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(25) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a master’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the council and the institutions of higher education, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor’s degree at a state institution of higher education;

(27) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics, as in the commission’s discretion is critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

(28) Develop, establish and implement a rule for higher education governing boards and institutions to follow when
considering capital projects. The guidelines shall assure that
the governing boards and institutions do not approve or
promote capital projects involving private sector businesses
which would have the effect of reducing property taxes on
existing properties or avoiding, in whole or in part, the full
amount of taxes which would be due on newly developed or
future properties;

(29) Consider and submit to the appropriate agencies of
the executive and legislative branches of state government
a budget that reflects recommended appropriations from the
commission and the institutions under its jurisdiction. The
commission shall submit as part of its budget proposal the
separate recommended appropriations it received from the
council, both for the council and the institutions under the
council’s jurisdiction. The commission annually shall
submit the proposed institutional allocations based on each
institution’s progress toward meeting the goals of its
institutional compact;

(30) The commission has the authority to assess
institutions under its jurisdiction, including the state
institutions of higher education known as Marshall
University and West Virginia University, for the payment of
expenses of the commission or for the funding of statewide
higher education services, obligations or initiatives related
to the goals set forth for the provision of public higher
education in the state;

(31) Promulgate rules allocating reimbursement of
appropriations, if made available by the Legislature, to
institutions of higher education for qualifying noncapital
expenditures incurred in the provision of services to students
with physical, learning or severe sensory disabilities;

(32) Make appointments to boards and commissions
where this code requires appointments from the State
College System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective the thirtieth day of June, two thousand, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(33) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(34) Determine when a joint rule among the governing boards of the institutions under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards of all the institutions under its jurisdiction, promulgate the joint rule;

(35) In consultation with the governing boards of Marshall University and West Virginia University, implement a policy jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;
(36) Promulgate a joint rule with the council establishing tuition and fee policy for all institutions of higher education, other than state institutions of higher education known as Marshall University and West Virginia University which are subject to the provisions of section one, article ten of this chapter. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Such other policies as the commission and council consider appropriate;

(37) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage institutions that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

(38) Notwithstanding any other provision of this code to the contrary, sell, lease, convey or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, and to retain the proceeds of any such sale or lease: Provided, That:
(A) The commission may not sell, lease, convey or otherwise dispose of any real property without first:

(i) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

(ii) Holding a public hearing on the issue in the county in which the real property is located; and

(iii) Providing notice to the Joint Committee on Government and Finance; and

(B) Any proceeds from the sale, lease, conveyance or other disposal of real property that is used jointly by institutions or for statewide programs under the jurisdiction of the commission or the council shall be transferred to the General Revenue Fund of the state.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership, including a distinct and visible role in setting the state’s policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;
(4) Academic program review and approval for institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes. The commission’s authority to review and approve academic programs for either the state institution of higher education known as Marshall University or West Virginia University is limited to programs that are proposed to be offered at a new location not presently served by that institution;

(5) Distribution of funds appropriated to the commission, including incentive and performance-based funding;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of any rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Development, establishment and implementation of information, assessment and accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, developing, establishing and implementing policies for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state pursuant to the findings and policy recommendations required by section eleven of this article;
(10) Development, implementation and oversight of statewide and regionwide projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of research, data collection and analysis, planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

(d) The commission is authorized to withdraw specific powers of any governing board of an institution under its jurisdiction for a period not to exceed two years, if the commission makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the board of governors to carry out its duties and responsibilities.
The period of withdrawal of specific powers may not exceed two years during which time the commission is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Marshall University, New River Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

(b) The institutional Board of Governors for Marshall University consists of sixteen persons and the institutional Board of Governors for West Virginia University consists of eighteen persons. Each other board of governors consists of twelve persons.

(c) Each board of governors includes the following members:

(1) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;
(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution;

(3) A member from the institutional classified employees duly elected by the classified employees of the respective institution; and

(4) For the institutional Board of Governors at Marshall University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of Marshall Community and Technical College serving as an ex officio, voting member.

(5) For the institutional Board of Governors at West Virginia University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairpersons of the following boards serving as ex officio, voting members:

(A) The institutional board of advisors of:

(i) The Community and Technical College at West Virginia University Institute of Technology; and

(ii) West Virginia University at Parkersburg; and

(B) The Board of Visitors of West Virginia University Institute of Technology.

(6) For each institutional board of governors of an institution that does not have an administratively linked community and technical college under its jurisdiction, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.
(7) For each institutional board of governors which has
an administratively linked community and technical college
under its jurisdiction:

(A) Eight lay members appointed by the Governor, by
and with the advice and consent of the Senate, pursuant to
this section and, additionally, the chairperson of the
institutional board of advisors of the administratively linked
community and technical college; and

(B) Of the eight lay members appointed by the
Governor, one shall be the superintendent of a county board
of education from the area served by the institution.

d) Of the eight or nine members appointed by the
Governor, no more than five may be of the same political
party. Of the twelve members appointed by the Governor to
the governing boards of Marshall University and West
Virginia University, no more than seven may be of the same
political party. Of the eight or nine members appointed by
the Governor, at least six shall be residents of the state. Of
the twelve members appointed by the Governor to the
governing boards of Marshall University and West Virginia
University, at least eight shall be residents of the state.

e) The student member serves for a term of one year.
Each term begins on the first day of July.

f) The faculty member serves for a term of two years.
Each term begins on the first day of July. Faculty members
are eligible to succeed themselves for three additional terms,
not to exceed a total of eight consecutive years.

g) The member representing classified employees
serves for a term of two years. Each term begins on the first
day of July. Members representing classified employees are
eligible to succeed themselves for three additional terms, not
to exceed a total of eight consecutive years.
(h) The appointed lay citizen members serve terms of four years each and are eligible to succeed themselves for no more than one additional term.

(i) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of June preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than four consecutive years.

(j) The appointed members of the institutional boards of governors serve staggered terms of four years.

(k) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

1. For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors, a member of an institutional board of advisors of any public institution of higher education, an employee of any institution of higher education, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors or the superintendent of a county board of education from being members of the governing boards.
(2) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of an institutional board of advisors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors from being members of the governing boards.

(l) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(m) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

(n) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses.
All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-5. Meetings and compensation.

(a) The council shall meet as needed at the time and place specified at the call of the chairperson. One meeting each year shall be a public forum for the discussion of the goals and standards for workforce development, economic development and vocational education in the state.

(b) The council shall hold an annual meeting at its final, regularly scheduled meeting of each fiscal year for the purpose of electing officers. At the annual meeting, the council shall elect from its voting members a chairperson and other officers as it may consider necessary or desirable. The chairperson and other officers are elected for one-year terms commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year. The chairperson of the council may serve no more than four consecutive one-year terms as chair.

(c) Members of the council serve without compensation. Members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of their expenses. An ex officio member of the council who is an employee of the state is reimbursed by the employing agency.

(d) A majority of the voting members constitutes a quorum for conducting the business of the council. All
25 action taken by the council shall be by majority vote of the
26 voting members present.

ARTICLE 6. ADVISORY COUNCILS AND BOARDS.

§18B-6-1. Institutional boards of advisors for regional
campuses and certain administratively linked
community and technical colleges.

1 (a) There are continued institutional boards of advisors
2 as follows:

3 (1) For each regional campus. The chairperson of the
4 board of advisors of West Virginia University at
5 Parkersburg serves as an ex officio, voting member of the
6 Governing Board of West Virginia University;

7 (2) For administratively linked community and technical
8 colleges which share a physical location with the sponsoring
9 institution. This category includes Marshall Community
10 and Technical College, West Virginia State Community and
11 Technical College and the Community and Technical
12 College at West Virginia University Institute of Technology.
13 The chairperson of the board of advisors of each
14 administratively linked community and technical college
15 serves as an ex officio, voting member of the sponsoring
16 institution's board of governors, or in the case of the
17 Community and Technical College at West Virginia
18 University Institute of Technology, the chairperson of the
19 board of advisors serves as an ex officio voting member of
20 the Governing Board of West Virginia University; and

21 (3) For Pierpont Community and Technical College.
22 The chairperson of the board of advisors of Pierpont
23 Community and Technical College serves as an ex officio,
24 voting member of the Fairmont State University Board of
25 Governors.
(b) The lay members of the institutional boards of advisors for the regional campuses are appointed by the board of governors.

(c) The lay members of the institutional boards of advisors established for the administratively linked community and technical colleges and Pierpont Community and Technical College are appointed by the West Virginia Council for Community and Technical College Education.

(d) The board of advisors consists of fifteen members, including a full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; a member from the institutional classified employees duly elected by the classified employees of the respective institution; and twelve lay persons appointed pursuant to this section who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of the population of its responsibility district and fields of study. At least eight of the twelve lay persons appointed shall be residents of the state. Of the lay members who are residents of the state, at least two shall be alumni of the respective institution and no more than a simple majority may be of the same political party.

(e) The student member serves for a term of one year beginning on the first day of May. The member from the faculty and the classified employees, respectively, serves for a term of two years beginning on the first day of May. The twelve lay members serve terms of four years each beginning on the first day of May. All members are eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled for the remainder of the unexpired term within thirty days of
the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy:

(1) All elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term; and

(2) Terms of members begin on the first day of May following election.

(f) Each board of advisors shall hold a regular meeting at least quarterly, commencing in May of each year. Additional meetings may be held upon the call of the chairperson, president of the institution or upon the written request of at least five members. A majority of the members constitutes a quorum for conducting the business of the board of advisors.

(g) One of the twelve lay members shall be elected as chairperson by the board of advisors in May of each year. A member may not serve as chairperson for more than four consecutive years.

(h) The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the boards of advisors and the institutions under this section shall be paid from funds allocated to the institutions for that purpose.

(i) Prior to the submission by the president to its governing board, the board of advisors shall review all proposals of the institution in the areas of mission, academic
programs, budget, capital facilities and such other matters as
requested by the president of the institution or its governing
board or otherwise assigned to it by law. The board of
advisors shall comment on each such proposal in writing,
with such recommendations for concurrence therein or
revision or rejection thereof as it considers proper. The
written comments and recommendations shall accompany
the proposal to the governing board and the governing board
shall include the comments and recommendations in its
consideration of and action on the proposal. The governing
board shall promptly acknowledge receipt of the comments
and recommendations and shall notify the board of advisors
in writing of any action taken thereon.

(j) Prior to their implementation by the president, the
board of advisors shall review all proposals regarding
institutionwide personnel policies. The board of advisors
may comment on the proposals in writing.

(k) The board of advisors shall provide advice and
assistance to the president and the governing board in areas
including, but not limited to, the following:

(1) Establishing closer connections between higher
education and business, labor, government and community
and economic development organizations to give students
greater opportunities to experience the world of work.
Examples of such experiences include business and
community service internships, apprenticeships and
cooperative programs;

(2) Communicating better and serving the current
workforce and workforce development needs of their service
area, including the needs of nontraditional students for
college-level skills upgrading and retraining and the needs
of employers for specific programs of limited duration; and
(3) Assessing the performance of the institution's graduates and assisting in job placement.

(l) When a vacancy occurs in the office of president of the institution, the board of advisors shall serve as a search and screening committee for candidates to fill the vacancy under guidelines established by the council. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. For the purposes of the search and screening process only, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the appropriate governing board. If the governing board rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the governing board approves one of the candidates submitted. In all cases, the governing board shall make the appointment with the approval of the council or the commission in the case of West Virginia University Institute of Technology. The governing board or the council shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee. This subsection does not apply to Fairmont State University. The President of Fairmont State University continues to be appointed pursuant to the provisions of section six, article one-b of this chapter.

(m) The boards of advisors shall develop a master plan for those administratively linked community and technical colleges which retain boards of advisors. The ultimate
158 responsibility for developing and updating the master plans at the institutional level resides with the institutional board of advisors, but the ultimate responsibility for approving the final version of these institutional master plans, including periodic updates, resides with the council. The plan shall include, but not be limited to, the following:

164 (1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

167 (2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

174 (3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

178 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 recommendations on the addition or deletion of degree programs as, in the discretion of the board of advisors, may be necessary.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.
(a) The commission shall implement an equitable system of job classifications, with the advice and assistance of staff councils and other groups representing classified employees, each classification to consist of related job titles and corresponding job descriptions for each position within a classification, together with the designation of an appropriate pay grade for each job title, which system shall be the same for corresponding positions of the commission and in institutions under all governing boards. The equitable system of job classification and the rules establishing it which were in effect immediately prior to the effective date of this section are hereby transferred to the jurisdiction and authority of the commission and shall remain in effect unless modified or rescinded by the commission.

(b) Any classified salary increases distributed within a state institution of higher education after the first day of July, two thousand one, shall be in accordance with the uniform classification system and a uniform and equitable salary policy adopted by each individual board of governors. Each salary policy shall detail the salary goals of the institution and the process whereby the institution will achieve or progress toward achievement of placing each classified employee at his or her minimum salary on the schedule established pursuant to section three of this article.

(c) A classified employee may receive a salary in excess of the salary established by the salary schedule for his or her pay grade and years of experience only if all such employees at the institution are receiving at least the minimum salary for their pay grade and years of experience as established for them by the salary schedule: Provided, That any salary increase must be provided in a manner that is consistent with the uniform classification system and the institution’s salary policy.
AN ACT to amend and reenact §62-1D-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-1F-1, §62-1F-2, §62-1F-3, §62-1F-4, §62-1F-5, §62-1F-6, §62-1F-7, §62-1F-8 and §62-1F-9, all relating to electronic interception of a nonconsenting party’s conduct or oral communications in his or her home by an investigative or law-enforcement officer or an informant invited into said home; excepting electronic interceptions of a nonconsenting party’s conduct or communications occurring in his or her home from the wiretapping and electronic surveillance act; providing definitions; requiring court order to perform electronic interception of a nonconsenting party’s conduct or communications occurring in his or her home and exceptions thereto; providing for state supreme court to establish requirements for providing after hours availability of magistrates and judges; authorizing law enforcement to apply for interception orders and providing criteria therefor; authorizing magistrates and circuit court judges to issue electronic interception orders; setting forth requirements for electronic interception order applications; requiring orders setting forth information; setting forth scope and duration of orders; setting forth procedures for maintaining, disclosing and disposing of electronic intercepts; requiring recording and summaries of electronic intercepts; establishing requirements for custodians and destruction of said recordings; placing
applications and orders under seal; authorizing use of information relating to other criminal violations under certain circumstances; placing restrictions on disclosure and use of electronically intercepted conduct and communications and related information derived therefrom; and providing for electronic intercepts in exigent circumstances without prior judicial approval subject to retroactive approval.

Be it enacted by the Legislature of West Virginia:

That §62-1D-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §62-1F-1, §62-1F-2, §62-1F-3, §62-1F-4, §62-1F-5, §62-1F-6, §62-1F-7, §62-1F-8 and §62-1F-9, all to read as follows:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.


(a) Except as otherwise specifically provided in this article it is unlawful for any person to:

(1) Intentionally intercept, attempt to intercept or procure any other person to intercept or attempt to intercept, any wire, oral or electronic communication; or

(2) Intentionally disclose or intentionally attempt to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this article; and

(3) Intentionally use or disclose or intentionally attempt to use or disclose the contents of any wire, oral or electronic
communication or the identity of any party thereto, knowing
or having reason to know that such information was
obtained through the interception of a wire, oral or
electronic communication in violation of this article.

(b) Any person who violates subsection (a) of this
section is guilty of a felony and, upon conviction thereof,
shall be imprisoned in the penitentiary for not more than
five years or fined not more than ten thousand dollars or
both fined and imprisoned.

(c) It is lawful under this article for an operator of a
switchboard or an officer, employee, or provider of any wire
or electronic communication service whose facilities are
used in the transmission of a wire communication to
intercept, disclose or use that communication or the identity
of any party to that communication in the normal course of
his or her employment while engaged in any activity which
is a necessary incident to the rendition of his or her service
or to the protection of the rights or property of the carrier of
the communication. Providers of wire or electronic
communication services may not utilize service observing or
random monitoring except for mechanical or service quality
control checks.

(d) Notwithstanding any other law, any provider of wire
or electronic communications services, or the directors,
officers, employees, agents, landlords or custodians of any
such provider, are authorized to provide information,
facilities or technical assistance to persons authorized by
this article to intercept wire, oral or electronic
communication if such provider or its directors, officers,
employees, agents, landlords or custodians has been
provided with a duly certified copy of a court order directing
such assistance and setting forth the period of time during
which the provision of the information, facilities, or
technical assistance is authorized and specifying the
(e) It is lawful under this article for a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state:

(f) Notwithstanding the provisions of this article or any other provision of law, an electronic interception as defined by section one, article one-f of this chapter, is regulated solely by the provisions of article one-f of this chapter, and no penalties or other requirements of this article are applicable.

ARTICLE IF. ELECTRONIC INTERCEPTION OF PERSON’S CONDUCT OR ORAL COMMUNICATIONS IN HOME BY LAW ENFORCEMENT.

§62-1F-1. Definitions.

(a) For the purposes of this article, the following terms have the following meanings:

(1) “Body wire” means: (a) An audio and/or video recording device surreptitiously carried on or under the control of an investigative or law-enforcement officer or informant to simultaneously record a nonconsenting party’s
conduct or oral communications; or (2) radio equipment surreptitiously carried on or under the control of an investigative or law-enforcement officer or informant to simultaneously transmit a nonconsenting party’s conduct or oral communications to recording equipment located elsewhere or to other law-enforcement officers monitoring the radio transmitting frequency.

(2) “Home” means the residence of a nonconsenting party to an electronic interception, provided that access to the residence is not generally permitted to members of the public and the nonconsenting party has a reasonable expectation of privacy in the residence under the circumstances.

(3) “Informant” means a person acting in concert with and at the direction of a law-enforcement officer in the investigation of possible violations of the criminal laws of this state or the United States.

(4) “Investigative or law-enforcement officer” means any officer empowered by law to conduct investigations of or to make arrests for criminal offenses enumerated in this code or an equivalent offense in another jurisdiction.

(5) “Electronically intercept” or “electronic interception” mean the simultaneous recording with a body wire of a nonconsenting party’s conduct or oral communications in his or her home by an investigative or law-enforcement officer or informant who is invited into the home and physically present with the nonconsenting party in the home at the time of the recording.

(b) Words and phrases that are not defined in this article, but which are defined in article one-d of this chapter, shall have the same meanings established in article one-d unless otherwise noted.
§62-1F-2. Electronic interception of conduct or oral communications in the home authorized.

(a) Prior to engaging in electronic interception, as defined in section one of this article, an investigative or law-enforcement officer shall, in accordance with this article, first obtain from a magistrate or a judge of a circuit court within the county wherein the nonconsenting party’s home is located an order authorizing said interception. The order shall be based upon an affidavit by the investigative or law-enforcement officer or an informant that establishes probable cause that the interception would provide evidence of the commission of a crime under the laws of this state or the United States.

(b) The Legislature hereby requests the Supreme Court of Appeals to promptly undertake all necessary actions and promulgate any requisite rules to assure a magistrate or circuit judge is available after normal business hours to authorize warrants.

§62-1F-3. Application for an order authorizing interception.

(a) Each application for an order authorizing electronic interception in accordance with the provisions of this article shall be made only to the magistrate or judge of the circuit court by petition in writing upon oath or affirmation and shall state the applicant's authority to make the application. Each application shall set forth the following:

(1) The identity of the investigative or law-enforcement officer making the application, and of the person authorizing the application, who shall be the head of the investigative or law-enforcement agency or an officer of the investigative or law enforcement agency designated in writing by the head of that agency: Provided, That an application made by a member of the State Police or an officer assigned to a
multijurisdictional task force authorized under section four, article ten, chapter fifteen of this code also may be authorized by the supervisor of that member or officer if the supervisor holds a rank of sergeant or higher;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his or her belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a description of the person whose conduct or communications are sought to be intercepted and a particular description of the home at which it is anticipated that the interception would occur: Provided, That the description of the home may be omitted where there is good cause to believe that the location is subject to change, (iii) a particular description of the type of conduct or communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose conduct or communications are to be intercepted;

(3) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described conduct or communication has been first obtained, a particular description of facts establishing probable cause to believe additional conduct or communications of the same type will occur thereafter; and

(4) Where the application is for the extension of an order, a statement setting forth the results obtained pursuant to such order from the interception or a reasonable explanation of the failure to obtain any such results.

(b) The magistrate or judge of the circuit court may require the applicant to furnish additional testimony or documentary evidence in support of the application.
(c) Notwithstanding the provisions of subsection (a) of this section, the magistrate or judge may take an oral statement under oath in which the applicant must set forth the information required in subsection (a) of this section. The applicant shall swear the oath by telephone. A magistrate or judge administering an oath telephonically under this subsection shall execute a declaration that recites the manner and time of the oath’s administration. The oral statement shall be recorded. The recording shall be considered to be an application for the purposes of this section. In such cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate or judge receiving it and shall be retained as a part of the record of proceedings for the issuance of the order.


(a) Upon application filed pursuant to the provisions of section three of this article, the magistrate or judge of the circuit court may enter an ex parte order, as requested or as modified or moulded, authorizing an electronic interception in a home if the magistrate or judge determines on the basis of the evidence and argument presented by the applicant that:

(1) There is probable cause to believe that one or more individuals are committing, have committed, or are about to commit one or more specified crimes under the laws of this state or the United States will be obtained through interception; and

(2) There is probable cause to believe that the home where the electronic interception is to occur is being used, or is about to be used, in connection with the commission of the offense, or offenses: Provided, That such determination shall not be required where the identity of the person
committing the offense and whose conduct or communications are to be intercepted is known, and the applicant makes an adequate showing as required pursuant to paragraph (ii), subdivision two, subsection (a), section three of this article that the location cannot be predetermined.

(b) Each order authorizing an electronic interception in accordance with the provisions of this article shall specify: (i) the identity of the person, if known, whose conduct or communications are to be intercepted, (ii) the nature and location of the home for which authority to intercept is granted, if necessary under subdivision three, subsection (a) of this section, (iii) a particular description of the type of conduct or communications sought to be intercepted and a statement of the particular offense to which it relates, (iv) the identity of the law-enforcement officer or officers applying for authorization to electronically intercept and of the officer authorizing the application, and (v) the period of time during which the interception is authorized, including a statement as to whether or not the interception automatically terminates when the described conduct or communication is first obtained.

(c) An order entered pursuant to the provisions of this section may authorize the electronic interception for a period of time that is necessary to achieve the objective of the authorization, not to exceed twenty days. Such twenty-day period begins on the day the order is entered. Extensions of an order may be granted, but only upon application for an extension made as provided in subsection (a) of this section and upon the magistrate or judge of the circuit court making the findings required by subsection (b) of this section. The period of extension may be no longer than the magistrate or judge deems necessary to achieve the purposes for which it was granted and, in no event, for longer than twenty days. Every order and extension thereof shall contain a provision
that the authorization to electronically intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of conduct or communications not otherwise subject to interception under this article and terminate upon attainment of the authorized objective, or in any event within the hereinabove described twenty-day period relating to initial applications.

§62-1F-5. Recording of intercepted communications.

(a) If recorded, the contents of any conduct or oral communications electronically intercepted shall be recorded on tape or wire or other comparable device and done in such a way or ways as will protect the recording from editing or alterations thereto.

(b) Whenever practicable, the investigative or law-enforcement officer overseeing the recording of an electronic interception shall keep a signed, written record of:

(1) The date and hours of the surveillance;

(2) The time and duration of each electronic interception;

(3) The participants, if known, in each electronic interception; and

(4) A summary of the content of each intercepted communication.

(c) Immediately upon the expiration of the period of time during which interception and recording is authorized by the order, or extensions thereof, such recordings shall be made available, if requested, to the magistrate or judge issuing such order. Custody of the recordings shall be with the law-enforcement officer authorizing the application
underlying the order. Such recordings may not be destroyed
except upon an order of the magistrate or judge to whom
application was made or a circuit judge presiding over any
subsequent prosecution related to the electronic interception.
The records shall be maintained by the magistrate court
clerk or circuit clerk of the county where the application was
filed. Duplicate recordings may be made for use or
disclosure pursuant to the provisions of subsections (a) and
(b), section nine, article one-d of this chapter for
investigations by law-enforcement agencies.

§62-lF-6. Sealing of applications, orders and supporting
papers.

Applications made and orders granted under this article
shall be ordered sealed by the magistrate or judge of the
circuit court to whom the application is made, and
maintained under seal in the custody of the magistrate court
clerk or the circuit clerk of the county in where the
application was filed. The applications and orders are
discernable and may be disclosed only in accordance with
the applicable provisions of this code and the rules of
criminal procedure for the State of West Virginia, and may
not be destroyed except upon order of such magistrate or
judge, and in any event shall be kept for not less than ten
years.

§62-lF-7. Investigative disclosure or use of contents of wire,
electronic or oral communications or derivative
evidence.

(a) Any law-enforcement officer who has obtained
knowledge of the contents of any electronic interception, or
evidence derived therefrom, may disclose such contents or
evidence to another law-enforcement officer to the extent
that such disclosure is appropriate to the proper performance
of the official duties of the officer making or receiving the
disclosure.
(b) Any law-enforcement officer who, by any means authorized by this article, has obtained knowledge of the contents of any electronic interception or any evidence derived therefrom may use such contents or evidence to the extent such use is appropriate to the proper performance of his or her official duties.

c) Any person who by any means authorized by this article, has obtained knowledge of the contents of any electronic interception or evidence derived therefrom, may disclose such contents or evidence to a law-enforcement officer and may disclose such contents or evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this State or of another state or of the United States or before any state or Federal grand jury or investigating grand jury.

§62-1F-8. Interception of communications relating to other offenses.

When a law-enforcement officer, while engaged in court authorized electronic interception in the manner authorized herein, intercepts communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in section seven. Such contents and evidence may be disclosed in testimony under oath or affirmation in any criminal proceeding in any court of this State or of another state or of the United States or before any state or Federal grand jury when authorized by a judge who finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this article. Such application shall be made as soon as practicable.


Notwithstanding any other provision of this article, when (1) a situation exists with respect to engaging in
electronic interception before an order authorizing such interception can with due diligence be obtained; (2) the factual basis for issuance of an order under this article exists; and (3) it is determined that exigent circumstances exist which prevent the submission of an application under section three of this article, conduct or oral communications in the person’s home may be electronically intercepted on an emergency basis if an application submitted in accordance with section three of this article is made to a magistrate or judge of the circuit within the county wherein the person’s home is located as soon as practicable, but not more than three business days after the aforementioned determination. If granted, the order shall recite the exigent circumstances present and be retroactive to the time of such determination. In the absence of an order approving such electronic interception, the interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earliest.

CHAPTER 12

(H.B. 202 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed August 21, 2007; in effect from passage.] [Approved by the Governor on September 6, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12-5a; and to amend and reenact §61-3-49 of said code, all relating to the receipt and transfer of any form of copper, aluminum, brass, lead or other nonferrous metal, stainless steel kegs or steel railroad track and track material; providing definitions; providing restrictions on applying for and grounds for
cancelling business registration certificates; imposing additional reporting and record retention requirements for certain purchasers of such metals; requiring the State Police to develop a standard form for reporting purchase information; providing for the inspection of records by law enforcement and investigators employed by public utilities and railroads; permitting investigators employed by public utilities and railroads to assist law enforcement investigations; providing for the return of such metals under certain conditions; and increasing criminal penalties for violations.

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 §11-12-5a; and that §61-3-49 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5a. Prohibition on certificate being obtained by person connected to illegal activities involving scrap metal.

1 (a) For the purposes of this section, the term “scrap metal” shall have the same meaning ascribed to it in section forty-nine, article three, chapter sixty-one of this code.

4 (b) No person that has had a previous business registration certificate cancelled pursuant to subsection (j), section forty-nine, article three, chapter sixty-one of this code may apply for a subsequent business registration certificate that would permit them to own, conduct, or operate any business involving the purchase of scrap metal or the operation or any salvage yard or recycling facility.
(c) No person may apply for a business registration certificate that would permit them to own, conduct, or operate any business involving the purchase of scrap metal or the operation or any salvage yard or recycling facility in which a person convicted in the previous two years of a third or subsequent offense under section forty-nine, article three, chapter sixty-one of this code will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of said business.

(d) Upon applying for a business registration certificate, pursuant to section four of this article, that would permit the applicant to own, conduct, or operate any business involving the purchase of scrap metal or the operation of any salvage yard or recycling facility, the Tax Commissioner shall require as part of the application a statement by the applicant that to the best of his or her knowledge and belief no person that has been convicted in the previous two years of a third or subsequent offense under section forty-nine, article three, chapter sixty-one of this code will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of said business.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

(a) For the purposes of this section, the following terms have the following meanings.

(1) “Business registration certificate” has the same meaning ascribed to it in section two, article twelve, chapter eleven of this code.
(2) “Purchaser” means any person in the business of purchasing scrap metal, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal.

(3) “Scrap metal” means any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, stainless steel kegs or steel railroad track and track material.

(b) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:

(1) The full name, permanent home and business addresses, and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character and weight of the scrap metal purchased; and

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan, or taken on consignment.

(c) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell said scrap metal; and
(2) A photocopy of a valid driver’s license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government: Provided, That, if the purchaser has a copy of the seller’s valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

(d) It shall be unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (b) and (c) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process: Provided, That the purchaser retains and makes available for review consistent with subsection (f) of this section the contract, bill of sale, or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: Provided, however, That the purchaser may redact any pricing or other commercially sensitive information from said contract, bill of sale, or similar documentation before making it available for inspection.

(e) Within thirty days of the effective date of the amendment and reenactment of this section during the second extraordinary session of the Legislature in two thousand seven, the West Virginia State Police shall make available a standard form purchasers of scrap metal may use to record all the information required under subsections (b) and (c) of this section.

(f) Using the form authorized under subsection (e) above, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date
of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser’s place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser’s regular business hours, by any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property: Provided, That in lieu of the purchaser keeping the records at their place of business, the purchaser shall file the records with the local detachment of the State Police and with the chief of police of the municipality or the sheriff of the county wherein he or she is transacting business within seventy-two hours of completion of the purchase. The records shall be retained by the State Police and the chief of police of the municipality or the sheriff for a period of not less than three years.

(g) To the extent otherwise permitted by law, any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property may accompany a law-enforcement officer upon the premises of a purchaser in the execution of valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(h) Upon the entry of a final determination and order by a court of competent jurisdiction, scrap metal found to have been misappropriated, stolen or taken under false pretenses may be returned to the proper owner of such material.

(i) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.
(j) Any person who knowingly or with fraudulent intent violates any provision of this section, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense thereof, shall be fined not less than one thousand dollars nor more than three thousand dollars; upon conviction of a second offense thereof, shall be fined not less than two thousand dollars and not more than four thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense thereof shall be fined not less than three thousand dollars and not more than five thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held by that person and state the date said cancellation shall take effect.

CHAPTER 13

(S.B. 2001 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12h, relating to an additional modification decreasing federal
adjusted gross income for West Virginia state personal income
tax for certain toll expenses charged by the West Virginia
Parkways, Economic Development and Tourism Authority;
and requiring the reimbursement to the General Revenue Fund
in the amount of personal income tax revenue not collected as
a result of the additional modification.

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 §11-21-12h,
to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12h. Additional modification reducing federal adjusted
gross income relating to tolls for travel on West
Virginia toll roads and paid electronically
through use of parkways authority commuter
(PAC) cards.

(a) For taxable years beginning on and after the first day
of January, two thousand seven, in addition to amounts
authorized to be subtracted from federal adjusted gross
income pursuant to subsection (c), section twelve of this
article, any payment during the taxable year for amounts
expended by an individual for tolls paid electronically
through use of a West Virginia Parkways, Economic
Development and Tourism Authority PAC card (parkways
authority commuter card) account for noncommercial
commuter passes for travel on toll roads in West Virginia,
not including amounts paid as refundable transponder
deposits or amounts reimbursed by an employer or
otherwise, is an authorized modification reducing federal
adjusted gross income, but only to the extent the amount is
not allowable as a deduction when arriving at the taxpayer's
federal adjusted gross income for the taxable year in which
the payment is made. In the case of a single person, a head
of household or a married couple filing a joint return, or a
married person filing a separate return, this authorized
modification reducing federal adjusted gross income shall
apply only to the portion of the expended amount that equals
or exceeds twenty-five dollars and the total amount
deducted for a taxable year shall not exceed one thousand
two hundred dollars. Any amount of qualified tolls paid and
eligible for this decreasing modification and not used in the
taxable year when paid shall carry forward for up to three
taxable years subsequent to the taxable year when paid.
Qualified toll payments not used by the end of the carry
forward period shall be forfeited.

(b) The Tax Commissioner annually, on or before the
thirty-first day of December of each calendar year,
beginning in two thousand eight, shall certify to the West
Virginia Parkways, Economic Development and Tourism
Authority: (i) The total dollar amount of tolls deducted by
individuals under this section on personal income tax returns
filed for the preceding taxable year beginning with taxable
year two thousand seven; and (ii) the total dollar amount of
personal income tax revenue not collected through the date
of such certification solely as a result of such total toll
deductions for such taxable year.

(c) On or before the thirtieth day of June of the
following calendar year, beginning in two thousand nine, the
West Virginia Parkways, Economic Development and
Tourism Authority shall pay to the Tax Commissioner an
amount equal to such certified total dollar amount of
personal income tax revenue not collected for the taxable
year covered by such certification: Provided, That the
authority shall make such payment solely from nontoll
revenues (that is, from revenues derived by the authority
from sources other than tolls charged for transit on the West
Virginia Turnpike) and only at such times and in such
amounts and installment payments as are permitted by
covenants and agreements of the authority under such bond
indentures and other bond agreements as are then applicable
to such nontoll revenues: *Provided, however,* That to the
extent required to comply with such bond indentures and
other bond agreements, the authority may defer the payment
of all or a part of such amount beyond the thirtieth day of
June of the following calendar year.

CHAPTER 14
(S.B. 2006 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to amend and reenact §5B-2-12 of the Code of West
Virginia, 1931, as amended, relating to the Tourism Promotion
Fund; and adding advertising on the internet to the definition
of “direct advertising”.

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

That §5B-2-12 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

§5B-2-12. Tourism Promotion Fund created; use of funds.

1 There is hereby continued in the State Treasury the
2 special revenue fund known as the Tourism Promotion Fund
3 created under prior enactment of section nine, article one of
4 this chapter.
(a) The Legislature finds that a courtesy patrol program providing assistance to motorists on the state's highways is one of the most beneficial methods to introduce a tourist visiting the state of the state's hospitality and good will. For that reason, four million seven hundred thousand dollars of the moneys deposited in the fund each year shall be deposited in a special revenue account in the State Treasury to be known as the Courtesy Patrol Fund. Expenditures from the fund shall be used solely to fund the courtesy patrol program providing assistance to motorists on the state's highways. Amounts collected in the fund which are found, from time to time, to exceed funds needed for the purposes set forth in this subdivision may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) If there are funds remaining after the distribution required in subdivision (a) of this section, a minimum of five percent of the moneys deposited remaining in the fund each year shall be used solely for direct advertising for West Virginia travel and tourism: Provided, That no less than twenty percent of these funds be expended, with the approval of the Director of the Division of Natural Resources, to effectively promote and market the state's parks, state forests, state recreation areas and wildlife recreational resources. Direct advertising means advertising which is limited to television, radio, mailings, newspaper, magazines, the internet and outdoor billboards or any combination thereof.

(c) The balance of the moneys deposited in the fund shall be used for direct advertising within the state's travel regions as defined by the commission. The funds shall be made available to these districts beginning the first day of July, one thousand nine hundred ninety-five, according to legislative rules authorized for promulgation by the Tourism Commission.
(d) All advertising expenditures over twenty-five thousand dollars from the Tourism Promotion Fund require prior approval by recorded vote of the commission. No member of the commission or of any committee created by the commission to evaluate applications for advertising or other grants may participate in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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HOUSE BILLS

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**Regular Session, 2008**

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### DISPOSITION OF BILLS ENACTED

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Senate Bills = 2,3 Digits

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House Bills = 4 Digits Senate Bills = 2,3 Digits
DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2008
Page Four

House Bills = 4 Digits

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House Bills = 3 Digits \hspace{1cm} Senate Bills = 4 Digits
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Second Extraordinary Session, 2008

SENATE BILLS

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Second Extraordinary Session, 2008

House Bills = 3 Digits  Senate Bills = 4 Digits

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Second Extraordinary Session, 2007

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DISPOSITION OF BILLS ENACTED

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Second Extraordinary Session, 2007

SENATE BILLS

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DISPOSITION OF BILLS ENACTED

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