**TABLE OF CONTENTS**

**ACTS**

Regular Session, 2009

GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>121.</td>
<td>(SB595)</td>
<td>Relating to Assignment of Child Support Obligations</td>
<td>1019</td>
</tr>
<tr>
<td>122.</td>
<td>(SB322)</td>
<td>Exempting Certain Life Insurance Policies from Medicaid Assignment</td>
<td>1021</td>
</tr>
<tr>
<td>123.</td>
<td>(SB632)</td>
<td>Requiring Insurers Share Certain Information with Bureau for Medical Services</td>
<td>1025</td>
</tr>
<tr>
<td>124.</td>
<td>(*HB3063)</td>
<td>Relating to Hunting, Tagging and Reporting Bear</td>
<td>1028</td>
</tr>
<tr>
<td>125.</td>
<td>(*HB2795)</td>
<td>Creating a Special Hunting and Fishing License for Persons with a Life-threatening Condition Who Are under Twenty-one Years of Age</td>
<td>1033</td>
</tr>
<tr>
<td>126.</td>
<td>(*HB2695)</td>
<td>Providing Criminal Penalties for a Hunter Who Fails to Render Aid to a Person the Hunter Shoots While Hunting</td>
<td>1036</td>
</tr>
<tr>
<td>127.</td>
<td>(HB2913)</td>
<td>Relating to the Statewide Independent Living Council</td>
<td>1042</td>
</tr>
</tbody>
</table>

[III]
# TABLE OF CONTENTS

## INSURANCE

128. (*SB326) Mandating Certain Dental Anesthesia Insurance Coverage .......................... 1047

129. (*HB3288) Relating to Mental Health Parity .......................... 1068

130. (SB494) Authorizing the Insurance Commissioner to Order Restitution in Certain Cases .......... 1077

131. (*SB631) Relating to Certain Insurance Policy Cancellation ........................................ 1079

132. (SB434) Relating to Long-term Care Policy Insurance Agents ................................. 1082

133. (*SB284) Relating to Viatical Settlements Act ................................................. 1085

134. (SB495) Authorizing Insurance Commissioner to Permit Certain Groups Life Insurance Policies ................................................. 1090

135. (*SB552) Relating to Affordable Health Insurance Plan Proposals ................................. 1092

136. (*SB278) Creating a Felony Offense of Willful Failure to Provide Certain Drug Benefits ................................................. 1103

137. (SB431) Providing In-state Medical Providers Notice of Small Group Health Benefit Plan ................................................. 1104

138. (*HB2660) Expanding the Definition of Limited Health Care Service ................................. 1111

139. (*HB3278) Relating to the Life and Health Insurance Guaranty Association .......................... 1117

140. (*HB2757) Relating to Financial Audits of Insurers ........................................... 1156

[IV]
TABLE OF CONTENTS

141. (*SB408) Relating to Model Health Plan for Uninsurable Individuals ............... 1187

LABOR

142. (*HB3076) Relating to the Regulation and Operation of Cranes ...................... 1190

LEGISLATIVE RULES

143. (*SB172) Authorizing the Department of Administration Promulgate Legislative Rules .................. 1200

144. (*SB153) Authorizing the Department of Environmental Protection to Promulgate Legislative Rules .................. 1207

145. (*HB2225) Authorizing the Department of Education and the Arts to Promulgate Legislative Rules .................. 1214

146. (*SB195) Authorizing the Department of Health and Human Resources to Promulgate Legislative Rules .................. 1216

147. (*HB2222) Authorizing the Department of Military Affairs and Public Safety to Promulgate Legislative Rules .................. 1220

148. (*SB227) Authorizing the Department of Revenue to Promulgate Legislative Rules .................. 1224

149. (*HB2218) Authorizing the Department of Transportation to Promulgate Legislative Rules .................. 1238

150. (*HB2819) Authorizing Miscellaneous Agencies and Boards to Promulgate Legislative Rules .................. 1239

[V]
# Table of Contents

151. (*HB2170) Authorizing the Department of Commerce to Promulgate Legislative Rules .................................. 1259

**LIENS**

152. (SB468) Requiring a Redemption Property Purchaser to Pay in Certified Funds ........ 1266

**MEDICAID**

153. (HB2884) Long-Term Care Partnership Program ........ 1267

**MENTAL HYGIENE**

154. (SB344) Authorizing Mental Hygiene Commissioner to Sign Readmission Orders ............... 1271

**METRO GOVERNMENT**

155. (*SB239) Allowing Majority Vote for Certain Metro Government Approval ........ 1272

**MINORS**

156. (*HB2877) Increasing the Monetary Penalties, Removing the Possibility of Incarceration and Adding Community Service for a Minor Who Misrepresents His or Her Age when Purchasing Alcohol ............... 1273

**MOTOR VEHICLES**

157. (SB12) Allowing 2-year Motorcycle Registration Period ..................... 1283

158. (*HB2557) Relating to the Enforcement of New Motor Vehicle Warranties ............. 1289

[VI]
## TABLE OF CONTENTS

### MUNICIPALITIES

159. (*SB256) Providing Additional Requirements for Certain Property Annexation .......... 1293

160. (HB3197) Authorizing Municipalities to Permit Nonpolice Officers to Issue Citations for Littering .................. 1301

161. (*HB2723) Authorizing Liens by Municipalities and Requiring Administrative Procedures for the Assessment and Collection of Delinquent Municipal Fees .... 1303

162. (SB719) Allowing Certain Police Officers to Keep Weapons after Retirement ............... 1306

163. (*HB2421) Requiring that Inoperable Fire Hydrants Be Painted Black and Be Reported to Emergency Dispatch Centers ............... 1308

### NATURAL RESOURCES

164. (SB346) Correcting Code Reference Related to Bear Tagging ......................... 1309

165. (*SB470) Regulating All-terrain Vehicles on Hatfield-McCoy Trail .................... 1311

### PERSONNEL

166. (SB487) Relating to the Division of Personnel Director’s Qualifications ............... 1320

### PROBATION OFFICERS

167. (*HB3305) Relating to the Powers and Duties of Probation Officers ............... 1323
# TABLE OF CONTENTS

## PROFESSIONS AND OCCUPATIONS

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Bill Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>168. (HB2539)</td>
<td>Authorizing Professional Licensing Boards to Combine Administrative Staff Functions</td>
<td>1325</td>
</tr>
<tr>
<td>169. (HB2801)</td>
<td>Updating Language and Making Technical Changes and Clarifications of the West Virginia Board of Medicine</td>
<td>1327</td>
</tr>
<tr>
<td>170. (*SB293)</td>
<td>Creating Felony Offense of Unauthorized Practice of Certain Health Care Professions</td>
<td>1329</td>
</tr>
<tr>
<td>171. (*HB2839)</td>
<td>Relating to the Management of Pain by Physicians</td>
<td>1334</td>
</tr>
<tr>
<td>172. (*SB526)</td>
<td>Relating to Osteopathy Post-Doctoral Training Requirements</td>
<td>1338</td>
</tr>
<tr>
<td>173. (*HB2528)</td>
<td>Updating the Regulation of the Practice of Forestry</td>
<td>1345</td>
</tr>
<tr>
<td>174. (*HB2423)</td>
<td>Relating to the Board of Medical Imaging and Radiation Therapy Technology</td>
<td>1361</td>
</tr>
<tr>
<td>175. (*HB2531)</td>
<td>Updating the Regulation of the Practice of Barbers and Cosmetologists</td>
<td>1381</td>
</tr>
<tr>
<td>176. (*HB2309)</td>
<td>Updating the Law Governing the Practice of Occupational Therapy</td>
<td>1412</td>
</tr>
<tr>
<td>177. (*HB2532)</td>
<td>Creating Licensure for Marriage and Family Therapists</td>
<td>1439</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

PROSECUTING ATTORNEYS INSTITUTE

178. (*HB3120) Increasing the West Virginia Prosecuting Attorneys Institute’s Executive Council’s Elected Members from Five to Seven and Permitting the Appointment of Special Prosecutors in Juvenile Delinquency, Child Abuse or Neglect Proceedings ................. 1462

PUBLIC EMPLOYEES

179. (*SB695) Relating to Payment for Certain State Employees’ Unused Sick Leave ......................... 1468

PUBLIC EMPLOYEES INSURANCE

180. (SB481) Requiring that Employers Provide Certain Documentation to Public Employees Insurance Agency ............ 1473

181. (SB492) Clarifying Certain Public Employees Insurance Agency Retirement Requirements .................... 1474

182. (HB3047) Clarifying That the Director of the Public Employees Insurance Agency is Authorized to Enter into Capitated Provider Arrangements for Provision of Primary Health Care Services ............... 1481

183. (SB464) Authorizing Public Employees Insurance Agency to Charge a Fee for Paper Transactions .................. 1482

[IX]
## TABLE OF CONTENTS

### PUBLIC SAFETY

184. (SB756) Increasing Military Facilities Security Guards’ Patrol Areas .................. 1483
185. (*SB318) Expanding the Division of Protective Services’ Law-enforcement Authority over State Property under Certain Circumstances .................. 1486
186. (*SB706) Creating a State Police Leave Donation Program .................. 1489
187. (*SB694) Creating an Intrastate Mutual Aid System .... 1491
188. (*SB279) Relating to Industrial Accidents and Emergency Response Regulations .................. 1498

### PUBLIC SERVICE COMMISSION

189. (*SB453) Relating to Public Service Commission Service of Decisions .................. 1505
190. (SB306) Increasing Pipeline Companies’ Special License Fees to Public Service Commission .................. 1508

### REHABILITATION SERVICES

191. (SB493) Transferring Central Registry for Head Injuries to Center for Excellence in Disabilities .................. 1509

### RETIREMENT

192. (*HB2702) Relating to the Deputy Sheriff Retirement System Act .................. 1510
# Table of Contents

193. (*HB2703) Relating to the State Teachers Retirement System .......................... 1536

194. (*HB2870) Extending the Deadline of the Buyback Provision Provided under the Teachers’ Defined Contribution Retirement System to the State Teachers Retirement System .......................... 1553

195. (HB2734) Relating to Minimum Guarantees Provided to Members who Elected to Transfer from the Teachers’ Defined Contribution System to the Teachers’ Retirement System ........ 1560

## Secretary of State

196. (*HB3194) Making it a Misdemeanor to Knowingly File False Information with the Secretary of State ............ 1562

## Silver Alert Plan

197. (*HB2504) Establishing the Silver Alert Plan, an Alert System for Missing Cognitively Impaired Persons ............ 1563

## Small Business Linked Deposit Program

198. (HB3155) Relating to the Renewal of the West Virginia Small Business Linked Deposit Program ............ 1569

## Solid Waste

199. (*SB641) Disclosing Solid Waste Origins at Commercial Landfills ............ 1573

[XI]
# TABLE OF CONTENTS

## STATE FIRE COMMISSION

### 200. (*HB2976) Requiring the State Fire Commission to Promulgate Rules Pertaining to the State Building Code .................................. 1575

### 201. (*HB2968) Requiring the State Fire Commission to Establish Safety Standards for Liquefied Petroleum Gas Systems ............ 1578

## STATE PERSONNEL ADVISORY COUNCIL

### 202. (SB587) Repealing Section Creating State Personnel Advisory Council ............. 1580

## STATE RAIL AUTHORITY

### 203. (*SB382) Adjusting State Rail Authority’s Contract Authority ...................... 1583

## TAXATION

### 204. (*HB3074) Allowing the Secretary of State to Notify People with Delinquent Taxes by Certified Mail .......................... 1590

### 205. (*SB540) Clarifying Certain Tax Commissioner’s Authorities ........................ 1592

### 206. (*SB258) Clarifying Local Fiscal Bodies Cannot Be Held Liable for Certain Deficits ........ 1635

### 207. (HB2931) Removing a Severance Tax on Timber for Tax Years 2010 through 2013 .... 1637

### 208. (*HB2535) Creating a Tax Credit for Certain Solar Energy Systems .................. 1641

### 209. (*HB2999) Relating to the Streamlined Sales and Use Tax Agreement and the West Virginia Consumers Sales and Service Tax and Use Tax ............ 1643

[XII]
### TABLE OF CONTENTS

| 210. | (*SB533) | Updating Terms in Consumers Sales and Service Tax | 1654 |
| 211. | (*HB3017) | Exempting from the Consumers Sales and Service Tax and Use Tax Any Sales of Donated Clothing or Clothing Accessories | 1682 |
| 212. | (*HB2401) | Providing for the Expiration of the Alternative Minimum Tax | 1683 |
| 213. | (SB329) | Updating Terms in Personal Income Tax Act | 1685 |
| 214. | (SB410) | Updating Terms in Corporation Net Income Tax Act | 1687 |
| 215. | (*SB724) | Relating to Health Care Provider Tax | 1689 |
| 216. | (*SB600) | Relating to Coal Reclamation Tax | 1692 |

**TREASURER’S OFFICE**

| 217. | (HB3295) | Relating to the West Virginia State Treasurer’s Office | 1699 |

**UNEMPLOYMENT COMPENSATION**

| 218. | (*SB246) | Relating to Unemployment Compensation Generally | 1707 |

**UNIFORM LAWS**

| 219. | (*HB2685) | Amending the Uniform Principal and Income Act | 1738 |
| 220. | (SB515) | Creating Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act | 1743 |

[XIII]
## TABLE OF CONTENTS

### UTILITY PROJECTS

221. (*HB2863) Relating to Construction of State Utility Projects .................................. 1761

### WORKERS’ COMPENSATION

222. (*SB537) Relating to Workers’ Compensation .......... 1774

### LOCAL - CITY OF RICHWOOD

223. (HB2841) Extending the Time for the City Council of Richwood to Meet as a Levying Body ........................ 1816

### LOCAL - MERCER COUNTY

224. (SB490) Authorizing Mercer County Commission to Appoint Emergency Operations Center Board ................. 1818

[XIV]
# TABLE OF CONTENTS

## ACTS

First Extraordinary Session, 2009

---

### GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>(HB105)</td>
<td>1820</td>
</tr>
<tr>
<td>2.</td>
<td>(SB1014)</td>
<td>1843</td>
</tr>
<tr>
<td>3.</td>
<td>(SB1015)</td>
<td>1845</td>
</tr>
<tr>
<td>4.</td>
<td>(SB1009)</td>
<td>1846</td>
</tr>
<tr>
<td>5.</td>
<td>(SB1010)</td>
<td>1857</td>
</tr>
<tr>
<td>6.</td>
<td>(SB1001)</td>
<td>1860</td>
</tr>
</tbody>
</table>

- **ALCOHOL LIQUOR**
  - Relating to the Issuance of Retail Licenses for the Sale of Liquor

- **APPROPRIATIONS**
  - Supplemental Appropriation From State Fund, General Revenue, to the Governor’s Office, Civil Contingent Fund, for Flood Recovery
  - Supplemental Appropriation from Excess Lottery Revenue Fund to Public Defender Services

- **AUTISM**
  - Providing a Tax Deduction for Trust Funds for Children with Autism

- **COUNTY COMMISSIONS**
  - Providing County Commissions with the Authority to Regulate Location of Exotic Entertainment Businesses

- **EDUCATION**
  - Creating Critical Skills Instructional Support Programs for Third and Eighth Grades

[XV]
TABLE OF CONTENTS

7. (SB1006) Relating to Hiring, Terminating, Transferring and Reassigning Teachers and School Personnel ............ 1865

8. (HB109) School Innovation Zones Act .................... 1880

ENERGY PORTFOLIO STANDARDS


GAMING ACTIVITIES

10. (HB102) Relating to the Allocation of Adjusted Gross Receipts from Pari-Mutuel Racetracks with West Virginia Lottery Racetrack Table Games ............ 1920

HIGH TECH BUSINESS PROPERTY

11. (SB1003) Creating the High-Technology Business Property Valuation Act ...................... 1930

MENTAL HEALTH FACILITIES

12. (SB1002) Relating to Recruitment and Retention of Certain Employees at Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital ............... 1939

MINES AND MINING

13. (SB1011) Relating to Post-mine Land Use Development ................................. 1941

PUBLIC FUNDING


[XVI]
TABLE OF CONTENTS

TAXATION

15. (HB104) Relating to the Motor Fuel Excise Tax Shortfall Reserve Fund ............... 1979
TABLE OF CONTENTS

ACTS

Second Extraordinary Session, 2009

GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Bribe</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SB2001</td>
<td>Supplementary Appropriation of Lottery Net Profits to Various Accounts</td>
<td>1983</td>
</tr>
<tr>
<td>2</td>
<td>SB2002</td>
<td>Supplementary Appropriation from General Revenue to Department of Administration</td>
<td>1986</td>
</tr>
<tr>
<td>3</td>
<td>SB2003</td>
<td>Supplementary Appropriation from General Revenue to Various Accounts</td>
<td>1988</td>
</tr>
<tr>
<td>4</td>
<td>SB2004</td>
<td>Supplementing, Amending and Increasing Items from State Road Fund to Department of Transportation</td>
<td>1999</td>
</tr>
<tr>
<td>5</td>
<td>SB2005</td>
<td>Supplementary Appropriation from General Revenue to Department of Education and the Arts</td>
<td>2000</td>
</tr>
<tr>
<td>6</td>
<td>SB2006</td>
<td>Supplementary Appropriation from State Excess Lottery Revenue Fund to Department of Education</td>
<td>2003</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

## ACTS

### Third Extraordinary Session, 2009

---

### GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### APPROPRIATIONS

1. (SB3003) Supplementary Appropriation to the Department of Commerce, Development Office, Broadband Deployment Fund .......................... 2005

### UNEMPLOYMENT COMPENSATION

2. (HB301) Utilizing Additional Federal Matching Moneys for Extended Unemployment Compensation Benefits ................................. 2007
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2009

OFFICERS
Speaker-- Richard Thompson, Wayne
Clerk--Gregory M. Gray, Charleston
Sergeant at Arms--Oce Smith, Fairmont
Doorkeeper--John Roberts, Hedgesville

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Pat McGeehan (D)</td>
<td>Chester</td>
<td>79$</td>
</tr>
<tr>
<td></td>
<td>Randy Swartzmiller (D)</td>
<td>Chester</td>
<td>75$ - 79$</td>
</tr>
<tr>
<td>Second</td>
<td>Timothy R. Ernis (D)</td>
<td>Wellsburg</td>
<td>72$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Roy E. Givens (D)</td>
<td>Wellsburg</td>
<td>66$ - 68$; 72$ - 75$; 79$</td>
</tr>
<tr>
<td>Third</td>
<td>Tal Hutchins (D)</td>
<td>Wheeling</td>
<td>72$ - 74$; 78$ - 79$</td>
</tr>
<tr>
<td>Fourth</td>
<td>Orphy Klempa (D)</td>
<td>Wheeling</td>
<td>78$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Michael T. Ferro (D)</td>
<td>McMechen</td>
<td>79$</td>
</tr>
<tr>
<td></td>
<td>Scott G. Varner (D)</td>
<td>Moundsville</td>
<td>71$ - 79$</td>
</tr>
<tr>
<td>Fifth</td>
<td>Dave Pethel (D)</td>
<td>Hundred</td>
<td>69$ - 71$; 74$ - 79$</td>
</tr>
<tr>
<td>Sixth</td>
<td>William Roger Romine (R)</td>
<td>Sistersville</td>
<td>75$ - 79$</td>
</tr>
<tr>
<td>Seventh</td>
<td>Lynwood &quot;Woody&quot; Ireland (R)</td>
<td>Pullman</td>
<td>78$ - 79$</td>
</tr>
<tr>
<td>Eighth</td>
<td>Everette W. Anderson, Jr. (R)</td>
<td>Williamstown</td>
<td>71$ - 79$</td>
</tr>
<tr>
<td>Ninth</td>
<td>Larry W. Border (R)</td>
<td>Davierville</td>
<td>70$ - 79$</td>
</tr>
<tr>
<td>Tenth</td>
<td>Tom Azinger (R)</td>
<td>Vienna</td>
<td>72$ - 79$</td>
</tr>
<tr>
<td></td>
<td>John Ellem (R)</td>
<td>Parkersburg</td>
<td>75$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Daniel Poling (D)</td>
<td>Parkersburg</td>
<td>Appt. 1/07, 78$ - 79$</td>
</tr>
<tr>
<td>Eleventh</td>
<td>Bob Ashley (R)</td>
<td>Spencer</td>
<td>67$ - 73$; 75$ - 79$</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Mitch Carmichael (R)</td>
<td>Ripley</td>
<td>75$ - 79$</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>Dale Martin (D)</td>
<td>Poca</td>
<td>75$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Brady Paxton (D)</td>
<td>Liberty</td>
<td>71$; Appt. 4/22/99, 74$; 75$ - 79$</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>Troy Andes (R)</td>
<td>Hurricane</td>
<td>78$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Patti Eagloski Schoen (R)</td>
<td>Scott Depot</td>
<td>76$ - 79$</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>Kevin J. Craig (D)</td>
<td>Huntington</td>
<td>75$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Carol Miller (R)</td>
<td>Huntington</td>
<td>78$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Jim Morgan (D)</td>
<td>Huntington</td>
<td>Appt. 200$; 75$; 76$ - 79$</td>
</tr>
<tr>
<td>Sixteenth</td>
<td>Doug Reynolds (D)</td>
<td>Huntington</td>
<td>78$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Kelii Sobonya (R)</td>
<td>Huntington</td>
<td>76$ - 75$</td>
</tr>
<tr>
<td></td>
<td>Dale Stephens (D)</td>
<td>Huntington</td>
<td>75$; 77$ - 79$</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>Don C. Perdue (D)</td>
<td>Princeton</td>
<td>74$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Richard Thompson (D)</td>
<td>Lavelette</td>
<td>65$; Resigned 6/81; 76$ - 79$</td>
</tr>
<tr>
<td>Eighteenth</td>
<td>Larry W. Barker (D)</td>
<td>Madison</td>
<td>77$ - 79$</td>
</tr>
<tr>
<td>Nineteenth</td>
<td>Greg Butcher (D)</td>
<td>Chapmanville</td>
<td>73$ - 77$; 79$</td>
</tr>
<tr>
<td></td>
<td>Jeff Eldridge (D)</td>
<td>Harts</td>
<td>77$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Ralph Rodighiero (D)</td>
<td>Logan</td>
<td>78$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Josh Stowers (D)</td>
<td>Alum Creek</td>
<td>79$</td>
</tr>
<tr>
<td>Twentieth</td>
<td>K. Steven Kominar (D)</td>
<td>Kermit</td>
<td>72$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Harry Keith White (D)</td>
<td>Gilbert</td>
<td>Appt. 9/11/92, 70$; 71$ - 79$</td>
</tr>
<tr>
<td>Twenty-second</td>
<td>Daniel J. Hall (D)</td>
<td>Oceana</td>
<td>79$</td>
</tr>
<tr>
<td></td>
<td>Linda Goode Phillips (D)</td>
<td>Pineville</td>
<td>79$</td>
</tr>
<tr>
<td>Twenty-third</td>
<td>Cliff Moore (D)</td>
<td>Thorpe</td>
<td>77$ - 79$</td>
</tr>
<tr>
<td>Twenty-fourth</td>
<td>John H. Shott (R)</td>
<td>Bluefield</td>
<td>79$</td>
</tr>
<tr>
<td>Twenty-fifth</td>
<td>E. J. Frazier (D)</td>
<td>Princeton</td>
<td>65$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Thomas Mike Porter (R)</td>
<td>Princeton</td>
<td>77$ - 79$</td>
</tr>
<tr>
<td>Twenty-sixth</td>
<td>Gerald Crosier (D)</td>
<td>Union</td>
<td>76$ - 79$</td>
</tr>
<tr>
<td>Twenty-seventh</td>
<td>Virginia Mahan (D)</td>
<td>Green Sulphur Springs</td>
<td>73$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Ricky Moyer (D)</td>
<td>Crab Orchard</td>
<td>75$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Linda Sumner (R)</td>
<td>Beckley</td>
<td>76$ - 79$</td>
</tr>
<tr>
<td></td>
<td>Sally Susman (D)</td>
<td>Beckley</td>
<td>74$ - 77$; 79$</td>
</tr>
<tr>
<td></td>
<td>William R. Wooton (D)</td>
<td>Beckley</td>
<td>63$ - 67$; 69$; (Senate 74$ - 75$); 79$</td>
</tr>
</tbody>
</table>

[XX]
<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twenty-eighth</td>
<td>Thomas W. Campbell (D)</td>
<td>Lewisburg</td>
<td>73rd - 79th</td>
</tr>
<tr>
<td></td>
<td>Ray Canterbury (R)</td>
<td>Ronceverte</td>
<td>75th - 79th</td>
</tr>
<tr>
<td>Twenty-ninth</td>
<td>Tom Louioso (D)</td>
<td>Oak Hill</td>
<td>67th - 68th, 70th - 77th, 79th</td>
</tr>
<tr>
<td></td>
<td>David G. Perry (D)</td>
<td>Oak Hill</td>
<td>75th - 79th</td>
</tr>
<tr>
<td></td>
<td>Margaret Anne Staggers (D)</td>
<td>Fayetteville</td>
<td>78th - 79th</td>
</tr>
<tr>
<td>Thirtieth</td>
<td>Bonnie Brown (D)</td>
<td>South Charleston</td>
<td>66th - 68th, 70th- 79th</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nancy Peoples Guthrie (D)</td>
<td>Charleston</td>
<td>78th - 79th</td>
</tr>
<tr>
<td></td>
<td>Barbara Burruss Hatfield (D)</td>
<td>South Charleston</td>
<td>67th - 69th, 74th - 79th</td>
</tr>
<tr>
<td></td>
<td>Mark Hunt (D)</td>
<td>Charleston</td>
<td>72nd - 74th, 77th - 79th</td>
</tr>
<tr>
<td></td>
<td>Doug Skaff (D)</td>
<td>South Charleston</td>
<td>79th</td>
</tr>
<tr>
<td></td>
<td>Sharon Spencer (D)</td>
<td>Charleston</td>
<td>66th, 68th - 71st, 73rd - 79th</td>
</tr>
<tr>
<td>Thirty-first</td>
<td>Danny Wells</td>
<td>Charleston</td>
<td>77th - 79th</td>
</tr>
<tr>
<td>Thirty-second</td>
<td>Carrie Webster (D)</td>
<td>Charleston</td>
<td>75th - 79th</td>
</tr>
<tr>
<td></td>
<td>Tim Armstead (R)</td>
<td>Elkview</td>
<td>Appt. 9/5/98, 73rd - 79th</td>
</tr>
<tr>
<td>Thirty-third</td>
<td>Patrick Lane (R)</td>
<td>Cross Lanes</td>
<td>77th - 79th</td>
</tr>
<tr>
<td></td>
<td>Ron Walters (R)</td>
<td>Cross Lanes</td>
<td>71st - 73rd, 75th - 79th</td>
</tr>
<tr>
<td>Thirty-fourth</td>
<td>David Walker (D)</td>
<td>Procius</td>
<td>79th</td>
</tr>
<tr>
<td>Thirty-fifth</td>
<td>Brent Boggs (D)</td>
<td>Gassaway</td>
<td>73rd - 79th</td>
</tr>
<tr>
<td></td>
<td>Sam J. Argento (D)</td>
<td>Mt. Nebo</td>
<td>77th - 79th</td>
</tr>
<tr>
<td>Thirty-sixth</td>
<td>Joe Talbott (D)</td>
<td>Webster Springs</td>
<td>71st - 72nd, 76th - 79th</td>
</tr>
<tr>
<td>Thirty-seventh</td>
<td>William G. Hartman (D)</td>
<td>Elkins</td>
<td>76th - 79th</td>
</tr>
<tr>
<td></td>
<td>Mike Ross (D)</td>
<td>Coalton</td>
<td>(Senate 71st - 76th); 79th</td>
</tr>
<tr>
<td>Thirty-eighth</td>
<td>Margaret (Peggy) D. Smith (D)</td>
<td>Weston</td>
<td>79th</td>
</tr>
<tr>
<td>Thirty-ninth</td>
<td>Bill Hamilton (R)</td>
<td>Buckhannon</td>
<td>76th - 79th</td>
</tr>
<tr>
<td>Fortieth</td>
<td>Mary M. Poling (D)</td>
<td>Moatsville</td>
<td>75th - 79th</td>
</tr>
<tr>
<td>Forty-first</td>
<td>Samuel J. Cann (D)</td>
<td>Clarksburg</td>
<td>72nd - 79th</td>
</tr>
<tr>
<td></td>
<td>Ron Fragale (D)</td>
<td>Clarksburg</td>
<td>70th - 73rd, 75th - 79th</td>
</tr>
<tr>
<td></td>
<td>Richard J. Jaquinta (D)</td>
<td>Clarksburg</td>
<td>76th - 79th</td>
</tr>
<tr>
<td></td>
<td>Tim Miley (D)</td>
<td>Bridgeport</td>
<td>77th - 79th</td>
</tr>
<tr>
<td>Forty-second</td>
<td>Mike Manypany (D)</td>
<td>Grafton</td>
<td>79th</td>
</tr>
<tr>
<td>Forty-third</td>
<td>Michael Caputo (D)</td>
<td>Fairmont</td>
<td>73rd - 79th</td>
</tr>
<tr>
<td></td>
<td>Linda Longstreth (D)</td>
<td>Fairmont</td>
<td>77th - 79th</td>
</tr>
<tr>
<td></td>
<td>Tim Manchin (D)</td>
<td>Fairmont</td>
<td>76th - 79th</td>
</tr>
<tr>
<td>Forty-fourth</td>
<td>Robert D. Beach (D)</td>
<td>Morgantown</td>
<td>Appt. 5/8, 73rd, 74th, 79th</td>
</tr>
<tr>
<td></td>
<td>Barbara Evans Fleischauer (D)</td>
<td>Morgantown</td>
<td>72nd - 75th, 78th - 79th</td>
</tr>
<tr>
<td></td>
<td>Charlene Marshall (D)</td>
<td>Morgantown</td>
<td>74th - 79th</td>
</tr>
<tr>
<td></td>
<td>Alex J. Shook (D)</td>
<td>Morgantown</td>
<td>78th - 79th</td>
</tr>
<tr>
<td>Forty-fifth</td>
<td>Larry A. Williams (D)</td>
<td>Tunnelton</td>
<td>Appt. 10/8/93, 71st - 79th</td>
</tr>
<tr>
<td>Forty-sixth</td>
<td>Stan Shaver (D)</td>
<td>Tunneltown</td>
<td>74th - 75th, 78th - 79th</td>
</tr>
<tr>
<td>Forty-seventh</td>
<td>Harold K. Michael (D)</td>
<td>Moorefield</td>
<td>69th - 79th</td>
</tr>
<tr>
<td>Forty-eighth</td>
<td>Allen V. Evans (R)</td>
<td>Dorcas</td>
<td>70th - 79th</td>
</tr>
<tr>
<td>Forty-ninth</td>
<td>Robert A. Schader (R)</td>
<td>Keyser</td>
<td>69th - 70th, 74th - 79th</td>
</tr>
<tr>
<td>Fifth</td>
<td>Ruth Rowan (R)</td>
<td>Points</td>
<td>79th - 79th</td>
</tr>
<tr>
<td>Fifty-first</td>
<td>Daryl E. Cowles (R)</td>
<td>Berkeley Springs</td>
<td>78th - 79th</td>
</tr>
<tr>
<td>Fifty-second</td>
<td>Craig P. Blair (R)</td>
<td>Martinsburg</td>
<td>76th - 79th</td>
</tr>
<tr>
<td>Fifty-third</td>
<td>Jonathan Miller (R)</td>
<td>Bunker Hill</td>
<td>78th - 79th</td>
</tr>
<tr>
<td>Fifty-fourth</td>
<td>Walter E. Duke (R)</td>
<td>Martinsburg</td>
<td>76th - 79th</td>
</tr>
<tr>
<td>Fifty-fifth</td>
<td>John Overington (R)</td>
<td>Martinsburg</td>
<td>67th - 79th</td>
</tr>
<tr>
<td>Fifty-sixth</td>
<td>Robert C. Tab (D)</td>
<td>Kearneysville</td>
<td>76th - 79th</td>
</tr>
<tr>
<td>Fifty-seventh</td>
<td>John Doyle (D)</td>
<td>Shepherdstown</td>
<td>66th, 71st - 79th</td>
</tr>
<tr>
<td>Fifty-eighth</td>
<td>Tiffany Lawrence (D)</td>
<td>Ranson</td>
<td>79th</td>
</tr>
</tbody>
</table>

(D) Democrats ........................................... 71
(R) Republicans ........................................ 29

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

1 Appointed January 9, 2009, to fill the vacancy created by the death of the Honorable Bill Proudfoot.
MEMBERS OF THE SENATE

REGULAR SESSION, 2009

OFFICERS

President—Earl Ray Tomblin, Chapmanville
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Howard Wellman, Bluefield
Doorkeeper—Billy L. Bevino, Charleston

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
<td>72d - 79th</td>
</tr>
<tr>
<td></td>
<td>Jack Yost (D)</td>
<td>Wellsburg</td>
<td>(House 76th - 78th); 79th</td>
</tr>
<tr>
<td>Second</td>
<td>Larry J. Edgell (D)</td>
<td>New Martinsburg</td>
<td>74th - 79th</td>
</tr>
<tr>
<td></td>
<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale</td>
<td>Appt. 11/97, 73rd; 74th - 79th</td>
</tr>
<tr>
<td>Third</td>
<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
<td>Appt. 5/14/85, 67th; 68th - 79th</td>
</tr>
<tr>
<td></td>
<td>J. Frank Deem (R)</td>
<td>Vienna</td>
<td>(House 52nd - 56th); 57th - 62nd; 64th - 65th; (House 69th); 72nd - 79th</td>
</tr>
<tr>
<td>Fourth</td>
<td>Karen L. Facemyer (R)</td>
<td>Ripley</td>
<td>(House 71st - 74th); 75th - 79th</td>
</tr>
<tr>
<td></td>
<td>Mike Hall (R)</td>
<td>Hurricane</td>
<td>(House 72nd - 77th); 78th - 79th</td>
</tr>
<tr>
<td>Fifth</td>
<td>Evan H. Jenkins (D)</td>
<td>Huntington</td>
<td>(House 72nd - 74th); 76th - 79th</td>
</tr>
<tr>
<td></td>
<td>Robert H. Plymale (D)</td>
<td>Ceredo</td>
<td>71st - 79th</td>
</tr>
<tr>
<td>Sixth</td>
<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
<td>66th - 79th</td>
</tr>
<tr>
<td></td>
<td>John Pat Fanning (D)</td>
<td>Laager</td>
<td>58th - 64th; 67th - 68th; 73rd - 79th</td>
</tr>
<tr>
<td>Seventh</td>
<td>Ron Stollings (D)</td>
<td>Madison</td>
<td>78th - 79th</td>
</tr>
<tr>
<td></td>
<td>Earl Ray Tomblin (D)</td>
<td>Chapmanville</td>
<td>(House 62nd - 64th); 65th - 79th</td>
</tr>
<tr>
<td>Eighth</td>
<td>Corey J. Palumbo (D)</td>
<td>Charleston</td>
<td>(House 76th - 78th); 79th</td>
</tr>
<tr>
<td></td>
<td>Erik P. Wells (D)</td>
<td>Charleston</td>
<td>78th - 79th</td>
</tr>
<tr>
<td>Ninth</td>
<td>D. Richard Browning (D)</td>
<td>Oceana</td>
<td>(House 69th - 72nd; 75th - 78th; 79th)</td>
</tr>
<tr>
<td>Tenth</td>
<td>Mike Green (D)</td>
<td>Daniels</td>
<td>78th - 79th</td>
</tr>
<tr>
<td></td>
<td>Donald T. Caruth (R)</td>
<td>Mercer</td>
<td>(House 76th); 77th - 79th</td>
</tr>
<tr>
<td></td>
<td>Jesse O. Guill (R)</td>
<td>Lewisburg</td>
<td>76th - 79th</td>
</tr>
<tr>
<td>Eleventh</td>
<td>William R. Laird, IV (D)</td>
<td>Oak Hill</td>
<td>(House 74th); 79th</td>
</tr>
<tr>
<td></td>
<td>C. Randy White (D)</td>
<td>Webster Springs</td>
<td>(House 73rd - 75th); 76th - 79th</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Douglas Eugene Facemire (D)</td>
<td>Sutton</td>
<td>79th</td>
</tr>
<tr>
<td></td>
<td>Joseph M. Minard (D)</td>
<td>Clarksburg</td>
<td>(House Appt. 1/83, 66th); 67th - 69th; 70th - 71st; 75th - 79th</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>Michael A. Oliverio, II (D)</td>
<td>Morgantown</td>
<td>(House 71st); 72nd - 79th</td>
</tr>
<tr>
<td></td>
<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont</td>
<td>(House 69th - 72nd); 73rd - 79th</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>Dave Sypolt (R)</td>
<td>Kingswood</td>
<td>78th - 79th</td>
</tr>
<tr>
<td></td>
<td>Bob Williams (D)</td>
<td>Grafton</td>
<td>79th</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>Clark Barnes (R)</td>
<td>Randolph</td>
<td>77th - 79th</td>
</tr>
<tr>
<td></td>
<td>Walt Helmick (D)</td>
<td>Marlinton</td>
<td>(House 1 yr., 69th); 73rd - 79th; 76th - 79th</td>
</tr>
<tr>
<td>Sixteenth</td>
<td>Herb Snyder (D)</td>
<td>Shenandoah Junction</td>
<td>73rd - 79th</td>
</tr>
<tr>
<td></td>
<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>74th - 79th</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>Dan Foster (D)</td>
<td>Charleston</td>
<td>(House 76th); 77th - 79th</td>
</tr>
<tr>
<td></td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>74th - 79th</td>
</tr>
</tbody>
</table>

(D) Democrats ........................................... 26
(R) Republicans ......................................... 8
TOTAL ..................................................... 34

[XXII]
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2009

STANDING

AGRICULTURE

Argento (Chair), Tabb (Vice Chair), Beach, Boggs, Campbell, Caputo, Eldridge, Guthrie, Hall, Manypenny, Martin, Morgan, Moye, M. Poling, Rodighiero, Swartzmiller, Wells, Williams, Evans (Minority Chair), Canterbury (Minority Vice Chair), Anderson, Border, Ireland, C. Miller and Romine.

BANKING AND INSURANCE

Moore (Chair of Banking), Reynolds (Vice Chair of Banking), Perry (Chair of Insurance), Shook (Vice Chair of Insurance), Frazier, Hartman, Hunt, Hutchins, Iaquinta, Louisos, Mahan, Manchin, Michael, Miley, Shaver, Skaff, Williams, Wooton, Azinger (Minority Chair of Banking), Schoen (Minority Vice Chair of Banking), Ashley (Minority Chair of Insurance), Walters (Minority Vice Chair of Insurance), Andes, Carmichael and J. Miller.

CONSTITUTIONAL REVISION

Fleischauer (Chair), Hutchins (Vice Chair), Brown, Caputo, Doyle, Ferro, Frazier, Guthrie, Hatfield, Hunt, Kominar, Marshall, Moore, Morgan, Staggers, Varner, Wells, Webster, Overington (Minority Chair), Romine (Minority Vice Chair), Blair, Ellem, Lane, McGeehan and Sobonya.

EDUCATION

M. Poling (Chair), Paxton (Vice Chair), Beach, Crosier, Ennis, Fragale, Lawrence, Louisos, Moye, Perry, Pethel, Rodighiero,
HOUSE OF DELEGATES COMMITTEES

Shaver, Smith, Stowers, Walker, Williams, Duke (Minority Chair), Sumner (Minority Vice Chair), Andes, Canterbury, Ireland, Romine, Rowan and Shott.

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

Barker (Chair of Energy, Industry and Labor), Shaver (Vice Chair of Energy, Industry and Labor), Kominar (Chair of Economic Development and Small Business), Craig (Vice Chair of Economic Development and Small Business), Brown, Butcher, Caputo, Fleischauer, Guthrie, Klemza, Mahan, Manypenny, Martin, Marshall, Paxton, Skaff, Walker, Sobonya (Minority Chair of Energy, Industry and Labor), C. Miller (Minority Vice Chair of Energy, Industry and Labor), Blair (Minority Chair of Economic Development and Small Business), Andes (Minority Vice Chair of Economic Development and Small Business), Hamilton, McGeehan, Schoen and Shott.

FINANCE

White (Chair), Campbell (Vice Chair), Craig, Doyle, Eldridge, Guthrie, Iaquinta, Klemza, Kominar, Mahan, Manchin, Marshall, Perdue, Phillips, M. Poling, Reynolds, Spencer, Varner, Anderson (Minority Chair), Carmichael (Minority Vice Chair), Ashley, Blair, Border, Evans and Walters.

GOVERNMENT ORGANIZATION

Morgan (Chair), Stephens (Vice Chair), Argento, Boggs, Butcher, Cann, Givens, Hall, Hartman, Hatfield, Manypenny, Martin, D. Poling, Skaff, Staggers, Swartzmiller, Talbott, Ross, C. Miller (Minority Chair), Porter (Minority Vice Chair), Azinger, Cowles, Rowan, McGeehan and J. Miller.

[XXIV]
HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Perdue (Chair), Hatfield (Vice Chair), Campbell, Eldridge, Fleischauer, Lawrence, Manypenny, Marshall, Moore, Moye, Perry, Phillips, D. Poling, Rodighiero, Spencer, Staggers, Susman, Wooton, Border (Minority Chair), J. Miller (Minority Vice Chair), Andes, Carmichael, Lane, C. Miller and Rowan.

JUDICIARY

Webster (Chair), Miley (Vice Chair), Barker, Brown, Caputo, Ferro, Fleischauer, Frazier, Hunt, Hutchins, Longstreth, Michael, Moore, Shook, Susman, Tabb, Wells, Wooton, Ellem (Minority Chair), Lane (Minority Vice Chair), Hamilton, Overington, Schoen, Schadler and Sobonya.

NATURAL RESOURCES

Talbott (Chair), Crosier (Vice Chair), Argento, Beach, Caputo, Craig, Eldridge, Fragale, Guthrie, Hall, Manypenny, Martin, Moye, Phillips, Rodighiero, Shaver, Swartzmiller, Varner, Hamilton (Minority Chair), Anderson (Minority Vice Chair), Duke, Ellem, Evans, Ireland and Romine.

PENSIONS AND RETIREMENT

Spencer (Chair), Pethtel (Vice Chair), Givens, Reynolds, Williams, Canterbury and Duke.

POLITICAL SUBDIVISIONS

Manchin (Chair), Beach (Vice Chair), Cann, Doyle, Fragale, Hartman, Lawrence, Longstreth, Louisos, Miley, D. Poling, Ross, Susman, Tabb, Varner, Williams, Sumner (Minority Chair), Cowles
HOUSE OF DELEGATES COMMITTEES

(Minority Vice Chair) Anderson, Duke, Ellem, J. Miller, Schadler and Shott.

ROADS AND TRANSPORTATION

Martin (Chair), Klempa (Vice Chair), Argento, Barker, Butcher, Craig, Crosier, Ennis, Ferro, Hall, Kominar, Michael, Shook, Smith, Stephens, Stowers, Walker, Wells, Schadler (Minority Chair), Canterbury (Minority Vice Chair), Armstead, Cowles, Evans, Porter and Rowan.

COMMITTEE ON SENIOR CITIZEN ISSUES

Williams (Chair), Ennis (Vice Chair), Argento, Butcher, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Moye, Perdue, Pethel, D. Poling, Ross, Spencer, Stephens, Susman, Rowan (Minority Chair), Evans (Minority Vice Chair), Azinger, Duke, Hamilton, Shott and Sumner.

RULES

Thompson (Chair), Boggs, Caputo, Fragale, Hatfield, Marshall, Morgan, Paxton, M. Poling, Talbott, Varner, Webster, White, Anderson, Armstead, Border, Carmichael and Overington.

VETERANS’ AFFAIRS AND HOMELAND SECURITY

Iaquinta (Chair of Veterans’ Affairs), Longstreth, (Vice Chair of Veterans’ Affairs), Swartzmiller (Chair of Homeland Security), Moye (Vice Chair of Homeland Security), Cann, Ennis, Ferro, Fleischauer, Givens, Hatfield, Hutchins, Paxton, Pethel, Spencer, Staggers, Smith, Stephens, Stowers, Azinger (Minority Chair of Veterans’ Affairs), Porter (Minority Vice Chair Veterans’ Affairs), Ireland (Minority Chair of Homeland Security), Ashley (Minority Vice Chair of Homeland Security), Armstead, Sumner and Walters.

[XXVI]
HOUSE OF DELEGATES COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

Wells (Cochair), Fragale, Staggers and Overington.

GOVERNMENT AND FINANCE

Thompson (Cochair), Boggs, Caputo, Webster, White, Armstead and Border.

GOVERNMENT OPERATIONS

Morgan (Cochair), Argento, Stephens, Rowan and Schoen.

LEGISLATIVE RULE-MAKING REVIEW

Brown (Cochair), D. Poling (Vice Cochair), Miley, Talbott, Overington, Sobonya, Thompson (ex officio).

PENSIONS AND RETIREMENT

Spencer (Cochair), Pethtel (Vice Cochair), Givens, Reynolds, Stephens, Canterbury and Duke.

STATUTORY LEGISLATIVE COMMITTEES

COMMISSION ON ECONOMIC DEVELOPMENT

Kominar (Cochair), Barker (Vice Cochair), Campbell, Craig, Klempa, D. Poling, M. Poling, Webster, White, Blair, Carmichael and Hamilton.

[XXVII]
COMMISSION ON INTERSTATE COOPERATION

Doyle (Cochair), Guthrie (Vice Cochair).

COMMISSION ON SPECIAL INVESTIGATIONS

Thompson (Cochair), Boggs, White, Ellem and Lane.

FOREST MANAGEMENT REVIEW COMMISSION

Michael (Cochair), Hartman, Williams and Romine.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

M. Poling (Cochair), Doyle, Fragale, Paxton, Perry and Sumner.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

Perdue (Cochair), Hatfield, Moore, Moye, Staggers, Border, Thompson (ex officio).

LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES

Manchin (Cochair), Mahan, Miley, Perdue and Schadler.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT

Kominar (Cochair), Barker, Klempa and Hamilton.
LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Perry (Cochair), Boggs, Morgan, Ross and Ellem.
COMMITTEES OF THE SENATE  
Regular Session, 2009  

STANDING  

AGRICULTURE  

Senators White (Chair), Williams (Vice Chair), Helmick, Laird, Minard, Palumbo, Snyder, Unger, K. Facemyer, Guills and Sypolt.  

BANKING AND INSURANCE  

Senators Minard (Chair), Jenkins (Vice Chair), Chafin, Fanning, Green, Helmick, Kessler, McCabe, Palumbo, Prezioso, Deem, K. Facemyer and Hall.  

CONFIRMATIONS  

Senators Stollings (Chair), Chafin (Vice Chair), Bowman, Green, Minard, Plymale, Prezioso, Hall and Sypolt.  

ECONOMIC DEVELOPMENT  

Senators Browning (Chair), Unger (Vice Chair), D. Facemire, Helmick, Kessler, McCabe, Oliverio, Snyder, Stollings, Wells, Williams, Caruth, K. Facemyer and Hall.  

EDUCATION  

Senators Plymale (Chair), Wells (Vice Chair), Browning, Edgell, Foster, Green, Laird, Oliverio, Stollings, Unger, White, Barnes, Boley and Guills.  

ENERGY, INDUSTRY AND MINING  

Senators Green (Chair), D. Facemire (Vice Chair), Fanning, Helmick, Jenkins, Kessler, Minard, Stollings, Williams, Yost, Deem, Guills and Sypolt.  

[XXX]
SENATE COMMITTEES

FINANCE

Senators Helmick (Chair), McCabe (Vice Chair), Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, Unger, Wells, White, Boley, K. Facemyer, Guills and Sypolt.

GOVERNMENT ORGANIZATION

Senators Bowman (Chair), Snyder (Vice Chair), Browning, Foster, Kessler, McCabe, Minard, Palumbo, White, Williams, Yost, Boley, Caruth and Sypolt.

HEALTH AND HUMAN RESOURCES

Senators Prezioso (Chair), Stollings (Vice Chair), Browning, Foster, Jenkins, Laird, Palumbo, Snyder, Unger, Yost, Boley, Guills and Hall.

INTERSTATE COOPERATION

Senators Jenkins (Chair), Snyder (Vice Chair), Browning, Palumbo, Wells, Caruth and Sypolt.

JUDICIARY

Senators Kessler (Chair), Oliverio (Vice Chair), Browning, Chafin, Foster, Jenkins, Laird, Minard, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall.

LABOR

Senators Oliverio (Chair), Williams (Vice Chair), Bowman, Foster, Green, Snyder, White, Yost, Barnes, Deem and Guills.

[XXXI]
SENATE COMMITTEES

MILITARY

Senators Wells (Chair), Yost (Vice Chair), Edgell, D. Facemire, Laird, Oliverio, Williams, Boley and Sypolt.

NATURAL RESOURCES

Senators Fanning (Chair), Laird (Vice Chair), Bowman, Edgell, D. Facemire, Helmick, McCabe, Prezioso, Unger, White, Barnes, Deem and K. Facemyer.

PENSIONS

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

RULES

Senators Tomblin (Chair), Bowman, Chafin, Fanning, Helmick, Kessler, Plymale, Prezioso, Boley and Caruth.

TRANSPORTATION AND INFRASTRUCTURE

Senators Unger (Chair), Jenkins (Vice Chair), D. Facemire, Fanning, Plymale, Stollings, White, Barnes and K. Facemyer.

JOINT COMMITTEES

ENROLLED BILLS

Senators Palumbo (Cochair), D. Facemire, Laird, Wells and Barnes.
SENATE COMMITTEES

GOVERNMENT AND FINANCE

Senators Tomblin (Cochair), Chafin, Helmick, Kessler, Plymale, Caruth and Deem.

GOVERNMENT OPERATIONS

Senators Bowman (Cochair), Helmick, McCabe, Snyder and Barnes.

LEGISLATIVE RULE-MAKING REVIEW

Senators Minard (Cochair), Snyder (Vice Cochair), Prezioso, Unger, Boley, K. Facemyer and Tomblin (ex officio).

PENSIONS AND RETIREMENT

Senators Foster (Cochair), McCabe (Vice Cochair), Edgell, Oliverio, Plymale, Deem and Hall.

RULES

Senators Tomblin (Cochair), Chafin and Caruth.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

Senators Browning (Cochair), Helmick, Kessler, McCabe, Oliverio, Plymale, Prezioso, Stollings, Unger, Barnes, Caruth and K. Facemyer.

COMMISSION ON INTERSTATE COOPERATION

Senators Jenkins (Cochair), Foster (Vice Cochair), Minard, Stollings, Wells, Caruth, Sypolt and Tomblin (ex officio).

[XXXIII]
SENATE COMMITTEES

COMMISSION ON SPECIAL INVESTIGATIONS

Senators Tomblin (*Cochair*), Chafin, Helmick, Boley and Caruth.

FOREST MANAGEMENT REVIEW COMMISSION

Senators Helmick (*Cochair*), Bowman, D. Facemire, Williams and K. Facemyer.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

Senators Plymale (*Cochair*), Wells, Edgell, Green, Unger and Boley.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

Senators Prezioso (*Cochair*), Foster, Jenkins, Stollings, Unger, Boley, Caruth and Tomblin (*ex officio*).

LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES

Senators Unger (*Cochair*), Green (*Vice Cochair*), Fanning, Helmick and Hall.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT

Senators McCabe (*Cochair*), Kessler, Stollings and Deem.

[XXXIV]
SENATE COMMITTEES

LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Senators White (Cochair), Green, Laird, Yost and Barnes.
AN ACT to amend and reenact §9-3-4 of the Code of West Virginia, 1931, as amended, relating to the assignment of child support; and replacing antiquated language.

Be it enacted by the Legislature of West Virginia:

That §9-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-4. Assignment of support obligations.

Any recipient of financial assistance under the program of state and federal assistance established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act thereto, shall, as a condition of receiving assistance funded under this part, assign to the Department of Health and Human Resources any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the

...
family, which accrues during the period that the family receives assistance under the program.

Each applicant for assistance subject to the assignment established in this section shall (during the application process) be informed in writing of the nature of the assignment.

Any payment of federal and state assistance made to or for the benefit of any child or children or the caretaker of a child or children creates a debt due and owing to the Department of Health and Human Resources by the person or persons responsible for the support and maintenance of the child, children or caretaker in an amount equal to the amount of assistance money paid: Provided, That the debt is limited by the amount established in any court order or final decree of divorce if the amount in the order or decree is less than the amount of assistance paid.

The assignment under this section shall subrogate the Department of Health and Human Resources to the rights of the child, children or caretaker to the prosecution or maintenance of any action or procedure existing under law providing a remedy whereby the Department of Health and Human Resources may be reimbursed for moneys expended on behalf of the child, children or caretaker. The Department of Health and Human Resources shall further be subrogated to the debt created by any order or decree awarding support and maintenance to or for the benefit of any child, children or caretaker included within the assignment under this section and shall be empowered to receive money judgments and endorse any check, draft, note or other negotiable document in payment thereof.

The assignment created under this section shall be released upon closure of the assistance case and the termination of assistance payments except for support and maintenance obligations accrued and owing at the time of
The Department of Health and Human Resources may, at the election of the recipient, continue to receive support and maintenance moneys on behalf of the recipient following closure of the assistance case and shall distribute the moneys to the caretaker, child or children.

CHAPTER 122

(S.B. 322 - By Senators Oliverio and Chafin)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, relating to exempting the first $25,000 of the death benefit of a life insurance policy from assignment by Medicaid recipients to the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §9-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Assignment of rights; right of subrogation by Department of Health and Human Resources to the rights of recipients of medical assistance; rules as to effect of subrogation.
(a) Submission of an application to the Department of Health and Human Resources for medical assistance is, as a matter of law, an assignment of the right of the applicant or legal representative thereof to recovery from personal insurance or other sources, including, but not limited to, liable third parties, to the extent of the cost of medical services paid for by the Medicaid program. This assignment of rights does not extend to Medicare benefits: Provided, That the first $25,000 of the death benefit of a life insurance policy is exempt from assignment under the provisions of this section.

At the time the application is made, the department shall include a statement along with such application that explains that the applicant has assigned all such rights and the legal implications of making such assignment as provided in this section.

If medical assistance is paid or will be paid to a provider of medical care on behalf of a recipient of medical assistance because of any sickness, injury, disease or disability, and another person is legally liable for such expense, either pursuant to contract, negligence or otherwise, the Department of Health and Human Resources shall have a right to recover full reimbursement from any award or settlement for such medical assistance from such other person or from the recipient of such assistance if he or she has been reimbursed by the other person. The department shall be legally assigned the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the sickness, injury, disease or disability for which the recipient has received damages. When an action or claim is brought by a medical assistance recipient or by someone on his or her behalf against a third party who may be liable for the injury, disease, disability or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the Department of Health and Human Resources for reimbursement of an amount sufficient to reimburse the
department the full amount of benefits paid on behalf of the
recipient under the medical assistance program for the injury,
disease, disability or death of the medical assistance
recipient. The claim of the Department of Health and Human
Resources assigned by such recipient shall not exceed the
amount of medical expenses for the injury, disease, disability
or death of the recipient paid by the department on behalf of
the recipient. The right of subrogation created in this section
includes all portions of the cause of action, by either
settlement, compromise, judgment or award, notwithstanding
any settlement allocation or apportionment that purports to
dispose of portions of the cause of action not subject to the
subrogation. Any settlement, compromise, judgment or
award that excludes or limits the cost of medical services or
care shall not preclude the Department of Health and Human
Resources from enforcing its rights under this section. The
secretary may compromise, settle and execute a release of
any such claim, in whole or in part.

(b) Nothing in this section shall be construed so as to
prevent the recipient of medical assistance from maintaining
an action for injuries received by him or her against any other
person and from including therein, as part of the
compensatory damages sought to be recovered, the amount
or amounts of his or her medical expenses, even though such
person received medical assistance in the payment of such
medical expenses, in whole or in part.

If the action be tried by a jury, the jury shall not be
informed as to the interest of the Department of Health and
Human Resources, if any, and such fact shall not be disclosed
to the jury at any time. The trial judge shall, upon the entry
of judgment on the verdict, direct that an amount equal to the
amount of medical assistance given be withheld and paid
over to the Department of Health and Human Resources.
Irrespective of whether the case be terminated by judgment
or by settlement without trial, from the amount required to be
paid to the Department of Health and Human Resources there
shall be deducted the attorney fees attributable to such
amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro rata portion of such attorney fees. Nothing in this section shall preclude any person who has received medical assistance from settling any cause of action which he or she may have against another person and delivering to the Department of Health and Human Resources, from the proceeds of such settlement, the sums received by him or her from the department or paid by the department for his or her medical assistance. If such other person is aware of or has been informed of the interest of the Department of Health and Human Resources in the matter, it shall be the duty of the person to whose benefit the release inures to withhold so much of the settlement as may be necessary to reimburse the department to the extent of its interest in the settlement. No judgment, award of or settlement in any action or claim by a medical assistance recipient to recover damages for injuries, disease or disability, in which the Department of Health and Human Resources has interest, shall be satisfied without first giving the department notice and reasonable opportunity to establish its interest. The department shall have sixty days from receipt of such written notice to advise the recipient or his or her representative in writing of the department's desire to establish its interest through the assignment. If no such written intent is received within the sixty-day period, then the recipient may proceed and in the event of full recovery forward to the department the portion of the recovery proceeds less the department's share of attorney's fees and costs expended in the matter. In the event of less than full recovery the recipient and the department shall agree as to the amount to be paid to the department for its claim. If there is no recovery, the department shall under no circumstances be liable for any costs or attorney’s fees expended in the matter. If, after being notified in writing of a subrogation claim and possible liability of the recipient, guardian, attorney or personal representative for failure to subrogate the department, a recipient, his or her guardian, attorney or
113 personal representative disposes of the funds representing the
114 judgment, settlement or award, without the written approval
115 of the department, that person shall be liable to the
116 department for any amount that, as a result of the disposition
117 of the funds, is not recoverable by the department. In the
118 event that a controversy arises concerning the subrogation
119 claims by the department, an attorney shall interplead,
120 pursuant to rule twenty-two of the Rules of Civil Procedure,
121 the portion of the recipient's settlement that will satisfy the
122 department exclusive of attorney’s fees and costs regardless
123 of any contractual arrangement between the client and the
124 attorney.

125 (c) Nothing contained herein shall authorize the
126 Department of Health and Human Resources to institute a
127 class action or multiple plaintiff action against any
128 manufacturer, distributor or vendor of any product to recover
129 medical care expenditures paid for by the Medicaid program.

CHAPTER 123

(S.B. 632 - By Senator Prezioso)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §9-5-11b of the Code of West
Virginia, 1931, as amended, relating to requiring insurers to
share information with the Bureau for Medical Services with
regard to services provided to an individual during a period of
coverage with another insurer.
Be it enacted by the Legislature of West Virginia:

That §9-5-11b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.


(a) All recipients of medical assistance under the Medicaid program are considered to have authorized all third parties, including, but not limited to, insurance companies and providers of medical care, to release to the Department of Health and Human Resources information needed by the department to secure or enforce its rights as assignee under this chapter.

(b) As a condition of doing business in the state, health insurers, including self-insured plans, group health plans as defined in §6074(a) of the Employee Retirement Income Security Act of 1974, service benefit plans, third-party administrators, managed care organizations, pharmacy benefit managers or other parties that are by statute, contract or agreement, legally responsible for payment of a claim for a health care item or service are required to comply with the following:

(1) Upon the request of the Bureau for Medical Services, or its contractor, provide information to determine the period that the service recipients, their spouse or dependents may be or may have been covered by the health insurer, including the nature of the coverage that is or was provided by the health insurer, the name, address, date of birth, Social Security number, group number, identifying number of the plan, and effective and termination dates. The information shall be provided in a format suitable for electronic data matches,
conducted under the direction of the Department of Health and Human Resources, no less than monthly or as prescribed by the secretary. The health insurer must respond within sixty working days after receipt of a written request for enrollment data from the department or its contractor;

(2) Accept the right of the Bureau for Medical Services of recovery and the assignment to the state of any right of an individual or other entity to payment from the party for an item or service for which payment has been made by the Bureau for Medical Services;

(3) Respond to any inquiry by the Bureau for Medical Services regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and

(4) Accept a claim submitted by the Bureau for Medical Services regardless of the date of submission of the claim, the type or format of the claim form, lack of preauthorization or the failure to present proper documentation at the point-of-sale that is the basis of the claim. Provided, That the claim is submitted by the Bureau for Medical Services within the three-year period beginning on the date on which the item or service was furnished and any action by the Bureau for Medical Services to enforce its right with respect to the claim is commenced within six years of the Bureau for Medical Services’ submission of the claim.
CHAPTER 124

(Com. Sub. for H.B. 3063 - By Delegates Talbott, Argento and Shaver)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to hunting, tagging and reporting bear; changing and clarifying lawful weight limits; clarifying that it is unlawful to shoot at or kill any bear while it is accompanied by a cub; making it unlawful to shoot at or kill a cub regardless of its weight, if it is accompanied by another bear; and penalties.

Be it enacted by the Legislature of West Virginia:

That §20-2-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

1 (a) A person in any county of this state may not hunt, capture, or kill any bear, or have in his or her possession any bear or bear parts, except during the hunting season for bear and in the manner designated by rules promulgated by the Division of Natural Resources and as provided in this
section. For the purposes of this section, bear parts include, but are not limited to, the pelt, gallbladder, skull and claws of bear.

(b) A person who kills a bear shall, within twenty-four hours after the killing, deliver the bear or fresh skin to a conservation officer or checking station for tagging. A Division of Natural Resources tag shall be affixed to it before any part of the bear may be transported more than seventy-five miles from the point of kill. The Division of Natural Resources tag shall remain on the skin until it is tanned or mounted. Any bear or bear parts not properly tagged shall be forfeited to the state for disposal to a charitable institution, school or as otherwise designated by the Division of Natural Resources.

(c) It is unlawful:

(1) To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

(2) To hunt a bear with:

(A) A shotgun using ammunition loaded with more than one solid ball;

(B) A rifle of less than twenty-five caliber using rimfire ammunition; or,

(C) A crossbow;

(3) To kill or attempt to kill any bear through the use of poison, explosives, snares, steel traps or deadfalls other than as authorized in this section;

(4) To shoot at or kill:
(A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed weight, after removal of all internal organs;

(B) Any bear accompanied by a cub; or

(C) Any bear cub so accompanied, regardless of its weight;

(5) To possess any part of a bear not tagged in accordance with the provisions of this section;

(6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of division personnel;

(7) To hunt bear with dogs or to cause dogs to chase bear during seasons other than those designated by the Division of Natural Resources for the hunting of bear;

(8) To pursue a bear with a pack of dogs other than the pack used at the beginning of the hunt once the bear is spotted and the chase has begun;

(9) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of this section;

(10) To organize for commercial purposes or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt notwithstanding the provisions of sections twenty-three and twenty-four of this article; or

(11) For any person who is not a resident of this state to hunt bear with dogs or to use dogs in any fashion for the purpose of hunting bear in this state except in legally authorized hunts.
(d) The following provisions apply to bear destroying property:

(1) (A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any conservation officer of the Division of Natural Resources for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.

(C) If the complaint is found to be justified, the officer or designated person may, together with the owner and other residents, proceed to hunt, destroy or capture the bear that caused the property damage: Provided, That only the conservation officer or the wildlife biologist shall determine whether to destroy or capture the bear and whether to use dogs to capture or destroy the bear: Provided, however, That, if out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(2) (A) When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner shall file a report with the Director of the Division of Natural Resources. The report shall state whether or not the bear was hunted and destroyed and, if so, the sex, weight and estimated age of the bear. The report shall also include an appraisal of the property damage occasioned by the bear duly signed by three competent appraisers fixing the value of the property lost.
(B) The report shall be ruled upon and the alleged damages examined by a commission comprised of the complaining property owner, an officer of the division and a person to be jointly selected by the officer and the complaining property owner.

(C) The division shall establish the procedures to be followed in presenting and deciding claims under this section in accordance with article three, chapter twenty-nine-a of this code.

(D) All claims shall be paid in the first instance from the Bear Damage Fund provided in section forty-four-b of this article. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be paid from the special revenue account of the Division of Natural Resources.

(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death. In cases where the livestock killed is pregnant, the total value shall be the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue had it been born.

(e) Criminal penalties. — (1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, which fine is not subject to suspension by the court, confined in jail not less than thirty nor more than one hundred days, or both fined and confined. Further, the person’s hunting and fishing licenses shall be suspended for two years.
(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2,000 nor more than $7,500, which fine is not subject to suspension by the court, confined in jail not less than thirty days nor more than one year, or both fined and confined. The person’s hunting and fishing licenses shall be suspended for life.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, which fine is not subject to suspension by the court, imprisoned in a correctional facility not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 125


[Passed March 31, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-46f, relating to wildlife resources; and creating a special hunting and fishing license for persons with a life-threatening condition who are under twenty-one years of age.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new section, designated §20-2-46f, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46f. Class DT special hunting and fishing license for persons with a life-threatening condition.

(a) A Class DT license is a special statewide hunting and fishing license for residents of the State of West Virginia and nonresidents, as permitted in subsection (e) of this section, entitling the licensee to fish or hunt all legal species of game at no charge, in accordance with the provisions of this section.

(b) A license form shall be furnished by the director to an applicant who meets the following requirements:

(1) He or she has been diagnosed by a licensed physician with a life-threatening condition; and

(2) He or she is under twenty-one years of age.

(c) A licensed physician must certify the applicant’s life-threatening condition by completing the license form. A “life-threatening condition” means a terminal condition or illness that according to current diagnosis has a high probability of death within two years, even with treatment with an existing generally accepted protocol. When completed, the license form constitutes a Class DT license. The Class DT license and a completed license application shall be submitted to the division, which will issue a wallet sized card to the licensee. The card and all other documents
and identification required to be carried by this article shall be in the licensee’s possession when hunting or fishing.

(d) A Class DT license entitles the holder to hunt and fish only under the following circumstances:

(1) The licensee is accompanied by a parent, guardian or, with written consent of the parent or guardian, any other competent adult at least twenty-one years of age;

(2) The individual assisting the licensee must hold a valid fishing or hunting license appropriate to the situation;

(3) The licensee and the individual assisting observe all other pertinent laws and regulations.

(e) The director shall provide licenses to nonresidents at no charge who:

(1) Meet the requirements of subsections (b) and (c) of this section; and

(2) Are recommended by qualifying nonprofit organizations who offer hunting and fishing experiences.

(f) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the qualifications of applicants and nonprofit organizations and the licensing process.
CHAPTER 126

(Com. Sub. for H.B. 2695 - By Delegate Brown)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §20-2-57 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §20-2-57a and 20-2-57b, all relating to duties and conduct by a hunter while hunting and related offenses; amending crimes and penalties for negligent shooting of animals and damage to property by a hunter while hunting; amending crimes and penalties for negligent shooting of another person by a hunter while hunting; amending reporting requirements; requiring hunter responsible for shooting another person to render aid to the injured person; creating misdemeanor and felony offenses for failing to render aid to the injured person; prohibiting hunting while intoxicated; creating misdemeanor offense of hunting while intoxicated; creating misdemeanor and felony offenses for shooting and wounding or killing another person while hunting under the influence of alcohol, controlled substances or drugs; providing for the suspension of hunting and fishing license for violations; and criminal penalties.


d Be it enacted by the Legislature of West Virginia:

That §20-2-57 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding
thereto two new sections, designated §20-2-57a and §20-2-57b, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-57. Negligent shooting, wounding or killing of livestock while hunting; criminal violations; penalty.

§20-2-57a. Negligent shooting, wounding or killing of another person while hunting; duty to render aid; criminal violations; suspension of hunting and fishing license; criminal penalties; administrative penalties.

§20-2-57b. Prohibition against hunting while intoxicated; offense of hunting while intoxicated; creating offense of shooting another person when hunting while intoxicated; creating misdemeanor and felony offenses for the same; defining suspension of hunting and fishing license; criminal penalties; administrative penalties.

§20-2-57. Negligent shooting, wounding or killing of livestock while hunting; criminal violations; penalty.

(a) It is unlawful for any person, while engaged in hunting, pursuing, taking or killing wild animals or wild birds, to carelessly or negligently shoot, wound or kill livestock, or to destroy or injure any other chattels or property.

Any person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in jail not more than ninety days, or both fined and confined. Restitution of the value of the livestock, chattel or property injured, damaged or destroyed shall be required upon conviction.

§20-2-57a. Negligent shooting, wounding or killing of another person while hunting; duty to render aid; criminal violations; suspension of hunting and fishing license; criminal penalties; administrative penalties.

(a) It is unlawful for any person, while engaged in the act of hunting, pursuing, taking or killing wild animals or wild
(b) Anyone who negligently shoots, wounds or injures another person while hunting, not resulting in serious bodily injury or death, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $1000 or confined in jail not more than six months, or both fined and confined.

(c) Anyone who negligently shoots and injures another person while hunting, resulting in serious bodily injury or death, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $2,500 or confined in jail for not more than one year, or both fined and confined.

(d) For purposes of this section, serious bodily injury means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(e)(1) Any person who, while hunting, discharges a firearm or arrow and knows or has reason to know that the discharge has caused bodily harm to another person shall:

(A) Immediately investigate the extent of the person’s injuries; and

(B) Render immediate reasonable assistance to the injured person.

(2) As used in this subsection, “reasonable assistance” means aid appropriate to the circumstances, including by not limited to obtaining or attempting to obtain assistance from a conservation or law enforcement officer, 911 dispatchers, emergency medical providers and medical personnel.
(f) Any person who fails to render aid and assistance to an injured person as required by subsection (e), to an injured party who has not sustained a serious bodily injury is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $2,500 and confined in jail for not more than one year, or both fined and confined.

(g) Any person who fails to render aid as required by subsection (e) to an injured party who has sustained a serious bodily injury or dies as a result of their injuries is guilty of a felony, and upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(h) Any person found guilty of committing a misdemeanor under this section shall have their hunting and fishing licenses suspended for a period of five years from the date of conviction or the date of release from confinement, whichever is later.

(i) Any person found guilty of committing a felony offense under this section shall have their hunting and fishing licenses suspended for a period of ten years from the date of conviction or the date of release from incarceration, whichever is later.

§20-2-57b. Prohibition against hunting while intoxicated; offense of hunting while intoxicated, creating offense of shooting another person when hunting while intoxicated; creating misdemeanor and felony offenses for the same; defining suspension of hunting and fishing license; criminal penalties; administrative penalties.

(a) It is unlawful for any person to hunt, pursue, take or kill wild animals or wild birds while the person:
(1) Is under the influence of alcohol; or
(2) Is under the influence of any controlled substance; or
(3) Is under the influence of any other drug; or
(4) Is under the combined influence of alcohol and any controlled substance or any other drug; or
(5) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more by weight.

Any person violating subsection (a) of this section is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $100 nor more than $500, or confined in jail for not less than 30 days nor more than 100 days, or both fined and confined.

It is unlawful for any person, while engaged in hunting, pursuing, taking or killing wild animals or wild birds, to carelessly or negligently shoot and wound another person while the shooter:

(1) Is under the influence of alcohol; or
(2) Is under the influence of any controlled substance; or
(3) Is under the influence of any other drug; or
(4) Is under the combined influence of alcohol and any controlled substance or any other drug; or
(5) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

Any person violating subsection (c) of this section is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $500 nor more than $1,500, or confined
in jail for not less than two months nor more than one year, or both fined and confined.

(e) It is unlawful for any person, while engaged in hunting, pursuing, taking or killing wild animals or wild birds, to carelessly or negligently shoot and kill another person while the shooter:

(2) Is under the influence of alcohol; or

(3) Is under the influence of any controlled substance; or

(4) Is under the influence of any other drug; or

(5) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(6) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(f) Any person violating subsection (e) of this section is guilty of a felony, and upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or imprisoned in a state correctional facility for not less than one year nor more than three years, or both fined and imprisoned.

(e) Any person found guilty of committing an offense under this section shall have their hunting and fishing licenses suspended for a period of five years from the date of conviction or the date of release from incarceration, whichever is later.

(f) Any person found guilty of committing a felony offense under this section shall have their hunting and fishing licenses suspended for a period of ten years from the date of conviction or the date of release from incarceration, whichever is later.
(g) Any person who shoots another person while intoxicated in violation of this section has the same duty and obligation to render aid to the injured person as is set forth in section fifty-seven-a of this article, and is subject to the additional penalties set forth therein as a separate and distinct violation, in the event that he or she fails to render aid to the injured person.

CHAPTER 127

(H.B. 2913 - By Delegates Williams, Ennis, Pethtel, Morgan and Stephens)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §18-10M-6 of the Code of West Virginia, 1931, as amended, relating to the Statewide Independent Living Council; clarifying appointment of council members by the Governor; deleting antiquated language and revising duties of the council.

Be it enacted by the Legislature of West Virginia:

That §18-10M-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10M. WEST VIRGINIA INDEPENDENT LIVING ACT.

(a) The West Virginia Statewide Independent Living Council is continued as a not-for-profit corporation which has been organized to meet the requirements of the Federal Rehabilitation Act: Provided, That the council may not be established as an entity within any agency or political subdivision of the state. The council shall be governed by a board of directors, consisting of the voting members of the council, as provided in this section. The composition of this board of directors, as well as the composition of the full council’s membership, shall include a majority of members who are persons with disabilities, as defined in the state plan, and a majority of members who are not employed by any agency of the state or Center for Independent Living. The council’s membership shall reflect balanced geographical representation, diverse backgrounds and the full range of disabilities recognized under the federal act, including physical, mental, cognitive, sensory and multiple.

(b) The council shall function as a partner with the Division of Rehabilitation Services in the planning and provision of independent living services in the state. In conjunction with the division, the council shall develop, approve and submit to the proper federal authorities the state plan for independent living, as required by the federal act. The council shall monitor, review and evaluate the effectiveness of the implementation of the state plan.

(c) Voting members. -- The council shall consist of twenty-four voting members including: one director of an Independent Living Center chosen by the directors of the independent living centers in the state. The Governor shall select appointments from among the nominations submitted by organizations representing a wide range of individuals with disabilities and other interested groups, as coordinated by the council, by and with the advice and consent of the Senate. These members may include other representatives from Centers for Independent Living, parents and guardians.
of individuals with disabilities, advocates of individuals with disabilities, representatives from the business and educational sectors, representatives of organizations that provide services for individuals with disabilities and other interested individuals, as appropriate to the purpose of the council.

(d) Nonvoting members. -- The membership of the council shall also include the following, nonvoting, ex officio members or their designees:

(1) A representative of the Division of Rehabilitation Services;

(2) A representative of the Office of Behavioral Health Services within the Department of Health and Human Resources;

(3) A representative of the West Virginia Housing Development Fund;

(4) A representative of the West Virginia Association of Rehabilitation Facilities;

(5) A representative of the Bureau of Senior Services; and

(6) A representative of the Office of Special Education Programs and Assurance in the Department of Education.

(e) The nonvoting membership may also include additional representatives of groups represented on the board of directors.

(f) Appointment. -- All council members are appointed by the Governor. The Governor shall appoint from among the nominations submitted by organizations representing a wide
range of individuals with disabilities and other interested
groups, as coordinated by the council.

(g) Terms of appointment. -- All council members are
appointed to serve for a term of three years, except that a
member appointed to fill a vacancy occurring prior to the
expiration of the term for which a predecessor was appointed
shall be appointed for the remainder of the unexpired term.
No member of the council may serve more than two
consecutive full terms.

(h) Vacancies. -- Any vacancy occurring in the appointed
membership of the council shall be filled in the same manner
as the original appointment. A vacancy does not affect the
power of the remaining members to execute the duties of the
council.

(i) Delegation. -- The Governor may delegate the
authority to fill a vacancy to the remaining voting members
of the council after initial appointments have been made.

(j) Duties. -- The council shall:

(1) In conjunction with the Division of Rehabilitation
Services, develop and sign the state plan for independent
living;

(2) Monitor, review and evaluate the implementation of
the state plan;

(3) Coordinate activities with the state rehabilitation
council and other bodies that address the needs of specific
disability populations and issues under other federal and state
law;

(4) Ensure that all regularly scheduled meetings of the
council are open to the public and sufficient advance notice
is provided; and
(5) Submit to the federal funding agency such periodic reports as are required and keep such records and afford access to such records, as may be necessary to verify such reports.

(6) Ensure that the state plan for independent living sets forth the steps that will be taken to maximize the cooperation, coordination and working relationships among:

(A) The Independent Living Rehabilitation Service Program, the Statewide Independent Living Council, and Centers for Independent Living; and

(B) The designated state unit, other state agencies represented on the council, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the council.

(k) Staffing and resources. -- The council may employ staff as necessary to perform the functions of the council, including an executive director, an administrative assistant and other staff as may be determined necessary by the council. The council shall supervise and evaluate staff. The council shall prepare, in conjunction with the division, a plan for the use of available resources as may be necessary to carry out the functions and duties of the council pursuant to this article, utilizing eligible federal funds, funds made available under this article and funds from other public and private sources. This resource plan shall, to the maximum extent possible, rely on the use of existing resources during the period of plan implementation.

(l) Compensation and expenses. -- The council may use resources that are available to it to reimburse members of the council for reasonable and necessary expenses incurred in the performance of their duties, including attending council
meetings, and to pay reasonable compensation to any member of the council who is either not employed by the state or is not otherwise compensated by his or her employer for performance of duties associated with the council, up to $50 per day.

CHAPTER 128

(Com. Sub. for S.B. 326 - By Senator Stollings)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-15-4j; to amend said code by adding thereto a new section, designated §33-16-3t; to amend said code by adding thereto a new section, designated §33-24-7j; to amend said code by adding thereto a new section, designated §33-25-8h; and to amend said code by adding thereto a new section, designated §33-25A-8i, all relating to mandating insurance coverage of dental anesthesia in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-15-4j; that said code be amended by adding thereto a new section, designated §33-16-3t; that said code be amended by adding thereto a new section, designated §33-24-7j; that said code be amended by adding
thereto a new section, designated §33-25-8h; and that said code be amended by adding thereto a new section, designated §33-25A-8i, 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.

33. Insurance.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

*§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

1 (a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules for the administration of

*Clerk's Note: This section was also amended by HB 3288 (Chapter 129), which passed subsequent to this act.
these plans, subject to the limitations contained in this article.
Those plans shall include:

(1) Coverages and benefits for X ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age eighteen or over;

(2) Annual checkups for prostate cancer in men age fifty and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child: Provided, That no plan may deny payment for a mother or her newborn child prior to forty-eight hours following a vaginal delivery, or prior to ninety-six hours following a caesarean section
delivery, if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. Those plans may also include, among other things, medicines, medical equipment, prosthetic appliances and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness.

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to any covered individual who has not yet attained the age of nineteen years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, in the event that the agency can demonstrate actuarially that its total anticipated costs for the treatment of mental illness for any plan will exceed or have exceeded two percent of the total costs for such plan in any experience period, then the agency may apply whatever cost-containment measures may be necessary, including, but not
limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks and using patient cost sharing in the form of copayments, deductibles and coinsurance.

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled, and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia;

(B) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and
with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency to make the optional coverage available and provide an opportunity of purchase to each employee.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.
(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. In the event that a Medicare-specific plan would no longer be available or advantageous for the agency and the retirees, the retirees shall remain eligible for coverage through the agency.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

(a) The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein provided shall include coverages and benefits for X ray and laboratory services in connection with mammogram and pap smears.
when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age fifty and over. Such benefits shall include, but not be limited to, the following:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force;

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age eighteen and over;

(3) A test for the human papilloma virus (HPV) for women age eighteen or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age eighteen and over;

(4) A checkup for prostate cancer annually for men age fifty or over; and

(5) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation.

(6) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed healthcare individuals in conjunction with dental care if the covered person is:
(A) Seven years of age or younger or is developmentally disabled and is either an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia; or

(B) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(c) The group life and accidental death insurance herein provided shall be in the amount of $10,000 for every employee. The amount of the group life and accidental death insurance to which an employee would otherwise be entitled shall be reduced to $5,000 upon such employee attaining age sixty-five.

(d) All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

(e) The provisions of article three, chapter five-a of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director
shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired: Provided, That the director shall negotiate and contract directly with health care providers and other entities, organizations and vendors in order to secure competitive premiums, prices and other financial advantages. The director shall deal directly with insurers or health care providers and other entities, organizations and vendors in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies: Provided, however, That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.
(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(g) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(i) The director shall provide by contract or contracts entered into under the provisions of this article the cost for coverage of children's immunization services from birth through age sixteen years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b and whooping cough. Additional immunizations may be required by the Commissioner of the Bureau for Public Health for public health purposes. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration be exempt from any deductible, per visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require
152 that other health care services provided at the time of
153 immunization be exempt from any deductible and/or
154 copayment provisions.

CHAPTER 33. INSURANCE.

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4j. Required coverage for dental anesthesia services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after July 1, 2009, provide as benefits to all subscribers and members coverage for dental anesthesia services as hereinafter set forth.

(b) For purposes of this article and section, “dental anesthesia services” means general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care provided to an enrollee or insured if the enrollee or insured is:

(A) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the enrollee or insured and for whom a superior result can be expected from dental care provided under general anesthesia; or
(B) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(c) Prior authorization. -- An entity subject to this section may require prior authorization for general anesthesia and associated outpatient hospital or ambulatory facility charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(d) An entity subject to this section may restrict coverage for general anesthesia and associated outpatient hospital or ambulatory facility charges unless the dental care is provided by:

(1) A fully accredited specialist in pediatric dentistry;

(2) A fully accredited specialist in oral and maxillofacial surgery; and

(3) A dentist to whom hospital privileges have been granted.

(e) Dental care coverage not required. -- The provisions of this section may not be construed to require coverage for the dental care for which the general anesthesia is provided.
48 (f) Temporal mandibular joint disorders. -- The provisions of this section do not apply to dental care rendered for temporal mandibular joint disorders.

51 (g) A policy, provision, contract, plan or agreement may apply to dental anesthesia services the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3t. Required coverage for dental anesthesia services.

1 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after July 1, 2009, provide as benefits to all subscribers and members coverage for dental anesthesia services as hereinafter set forth.

7 (b) For purposes of this article and section, “dental anesthesia services” means general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care provided to an enrollee or insured if the enrollee or insured is:

13 (1) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the enrollee or insured and for whom a superior result can be expected from dental care provided under general anesthesia; or

20 (2) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and
with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(c) Prior authorization. -- An entity subject to this section may require prior authorization for general anesthesia and associated outpatient hospital or ambulatory facility charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(d) An entity subject to this section may restrict coverage for general anesthesia and associated outpatient hospital or ambulatory facility charges unless the dental care is provided by:

(1) A fully accredited specialist in pediatric dentistry;

(2) A fully accredited specialist in oral and maxillofacial surgery; and

(3) A dentist to whom hospital privileges have been granted.

(e) Dental care coverage not required. -- The provisions of this section may not be construed to require coverage for the dental care for which the general anesthesia is provided.

(f) Temporal mandibular joint disorders. -- The provisions of this section do not apply to dental care rendered for temporal mandibular joint disorders.
A policy, provision, contract, plan or agreement may apply to dental anesthesia services the same deductibles, coinsurance and other limitations as apply to other covered services.

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

§33-24-7j. Required coverage for dental anesthesia services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after July 1, 2009, provide as benefits to all subscribers and members coverage for dental anesthesia services as hereinafter set forth.

(b) For purposes of this article and section, “dental anesthesia services” means general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care provided to an enrollee or insured if the enrollee or insured is:

  (1) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the enrollee or insured and for whom a superior result can be expected from dental care provided under general anesthesia; or

  (2) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and
with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(c) **Prior authorization.** -- An entity subject to this section may require prior authorization for general anesthesia and associated outpatient hospital or ambulatory facility charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(d) An entity subject to this section may restrict coverage for general anesthesia and associated outpatient hospital or ambulatory facility charges unless the dental care is provided by:

(1) A fully accredited specialist in pediatric dentistry;

(2) A fully accredited specialist in oral and maxillofacial surgery; and

(3) A dentist to whom hospital privileges have been granted.

(e) **Dental care coverage not required.** -- The provisions of this section may not be construed to require coverage for the dental care for which the general anesthesia is provided.

(f) **Temporal mandibular joint disorders.** -- The provisions of this section do not apply to dental care rendered for temporal mandibular joint disorders.
(g) A policy, provision, contract, plan or agreement may apply to dental anesthesia services the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8h. Required coverage for dental anesthesia services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after July 1, 2009, provide as benefits to all subscribers and members coverage for dental anesthesia services as hereinafter set forth.

(b) For purposes of this article and section, “dental anesthesia services” means general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care provided to an enrollee or insured if the enrollee or insured is:

(1) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the enrollee or insured and for whom a superior result can be expected from dental care provided under general anesthesia; or

(2) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful
result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(c) Prior authorization. -- An entity subject to this section may require prior authorization for general anesthesia and associated outpatient hospital or ambulatory facility charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(d) An entity subject to this section may restrict coverage for general anesthesia and associated outpatient hospital or ambulatory facility charges unless the dental care is provided by:

1. A fully accredited specialist in pediatric dentistry;

2. A fully accredited specialist in oral and maxillofacial surgery; and

3. A dentist to whom hospital privileges have been granted.

(e) Dental care coverage not required. -- The provisions of this section may not be construed to require coverage for the dental care for which the general anesthesia is provided.

(f) Temporal mandibular joint disorders. -- The provisions of this section do not apply to dental care rendered for temporal mandibular joint disorders.

(g) A policy, provision, contract, plan or agreement may apply to dental anesthesia services the same deductibles, coinsurance and other limitations as apply to other covered services.
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8i. Third-party reimbursement for dental anesthesia services.

1 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after July 1, 2009, provide as benefits to all subscribers and members coverage for dental anesthesia services as hereinafter set forth.

(b) For purposes of this section, “dental anesthesia services” means general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care provided to a subscriber or member if the subscriber or member is:

(1) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the subscriber or member and for whom a superior result can be expected from dental care provided under general anesthesia; or

(2) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a
superior result can be expected from dental care provided under general anesthesia.

(c) Prior authorization. -- An entity subject to this section may require prior authorization for general anesthesia and associated outpatient hospital, ambulatory facility or similar charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(d) An entity subject to this section may restrict coverage for general anesthesia and associated outpatient hospital or ambulatory facility charges unless the dental care is provided by:

(1) A fully accredited specialist in pediatric dentistry;

(2) A fully accredited specialist in oral and maxillofacial surgery; and

(3) A dentist to whom hospital privileges have been granted.

(e) Dental care coverage not required. -- The provisions of this section may not be construed to require coverage for the dental care for which the general anesthesia is provided.

(f) Temporal mandibular joint disorders. -- The provisions of this section do not apply to dental care rendered for temporal mandibular joint disorders.

(g) A policy, provision, contract, plan or agreement may apply to dental anesthesia services the same deductibles, coinsurance and other limitations as apply to other covered services.
AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-16-3a of said code, all relating to group accident and sickness insurance requirements to cover treatment of mental illness; providing that actual increases in costs for certain coverage determine whether cost containment measures may be applied by Public Employees Insurance Agency and private carriers; and removing certain provisions regarding small groups.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-16-3a of said code be amended and reenacted, all to read as follows:

Chapter 5. General Powers and Authority of the Governor; Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.

33. Insurance.
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

*§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules for the administration of these plans, subject to the limitations contained in this article. Those plans shall include:

(1) Coverages and benefits for X ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, when performed for cancer

*CLERK’S NOTE: This section was also amended by SB 326 (Chapter 128), which passed prior to this act.
screening or diagnostic services on a woman age eighteen or over;

(2) Annual checkups for prostate cancer in men age fifty and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child: Provided, That no plan may deny payment for a mother or her newborn child prior to forty-eight hours following a vaginal delivery, or prior to ninety-six hours following a caesarean section delivery, if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. Those plans may also include, among other things, medicines, medical equipment, prosthetic appliances and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness.

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section,
"serious mental illness" means an illness included in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to any covered individual who has not yet attained the age of nineteen years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, in the event that the agency can demonstrate that its total costs for the treatment of mental illness for any plan exceeded two percent of the total costs for such plan in any experience period, then the agency may apply whatever additional cost-containment measures may be necessary, including, but not limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan for the next experience period.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks and using patient
cost sharing in the form of copayments, deductibles and coinsurance.

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled, and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia;

(B) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency
120 to make the optional coverage available and provide an
121 opportunity of purchase to each employee.

122 (c) The finance board may cause to be separately rated
123 for claims experience purposes:

124 (1) All employees of the State of West Virginia;

125 (2) All teaching and professional employees of state
126 public institutions of higher education and county boards of
127 education;

128 (3) All nonteaching employees of the Higher Education
129 Policy Commission, West Virginia Council for Community
130 and Technical College Education and county boards of
131 education; or

132 (4) Any other categorization which would ensure the
133 stability of the overall program.

134 (d) The agency shall maintain the medical and
135 prescription drug coverage for Medicare-eligible retirees by
136 providing coverage through one of the existing plans or by
137 enrolling the Medicare-eligible retired employees into a
138 Medicare-specific plan, including, but not limited to, the
139 Medicare/Advantage Prescription Drug Plan. In the event
140 that a Medicare-specific plan would no longer be available or
141 advantageous for the agency and the retirees, the retirees
142 shall remain eligible for coverage through the agency.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS
INSURANCE.

§33-16-3a. Same -- Mental health.
(a) (1) Notwithstanding the requirements of subsection (b) of this section, any health benefits plan described in this article that is delivered, issued or renewed in this state shall provide benefits to all individual subscribers and members and to all group members for expenses arising from treatment of serious mental illness. The expenses do not include custodial care, residential care or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, as periodically revised, under the diagnostic categories or subclassifications of: (A) Schizophrenia and other psychotic disorders; (B) bipolar disorders; (C) depressive disorders; (D) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (E) anxiety disorders; and (F) anorexia and bulimia.

(2) Notwithstanding any other provision in this section to the contrary, in the event that an insurer can demonstrate actuarially to the Insurance Commissioner that its total anticipated costs for treatment for mental illness, for any plan will exceed or have exceeded two percent of the total costs for such plan in any experience period, then the insurer may apply whatever cost containment measures may be necessary, including, but not limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan: Provided, That for any plan year beginning on or after October 3, 2009, an insurer providing a “group health plan,” as defined in section one-a of this article, with an average of more than fifty employees on business days during the preceding calendar year, may not apply cost containment measures as provided in this subdivision unless the insurer can demonstrate that the application of this section results in an increase of two percent of the actual total costs of coverage for the plan year involved with respect to medical-surgical benefits and mental health benefits under the plan: Provided, however, That such
cost containment measures implemented are applicable only for the plan year following approval of the request to implement cost containment measures.

(3) The insurer shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management tools, including, but not limited to, utilization review, use of provider networks, implementation of cost containment measures, preauthorization for certain treatments, setting coverage levels including the number of visits in a given time period, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, and using patient cost sharing in the form of copayments, deductibles and coinsurance.

(4) The amendments to this subsection enacted during the regular session of the Legislature in the year 2009 shall apply with respect to group health plans for plan years beginning on or after October 3, 2009.

(b) With respect to mental health benefits furnished to an enrollee of a health benefit plan offered in connection with a group health plan, for a plan year beginning on or after January 1, 1998, the following requirements shall apply to aggregate lifetime limits and annual limits.

(1) Aggregate lifetime limits:

(A) If the health benefit plan does not include an aggregate lifetime limit on substantially all medical and surgical benefits, as defined under the terms of the plan but not including mental health benefits, the plan may not impose any aggregate lifetime limit on mental health benefits;
(B) If the health benefit plan limits the total amount that may be paid with respect to an individual or other coverage unit for substantially all medical and surgical benefits (in this paragraph, "applicable lifetime limit"), the plan shall either apply the applicable lifetime limit to medical and surgical benefits to which it would otherwise apply and to mental health benefits, as defined under the terms of the plan, and not distinguish in the application of the limit between medical and surgical benefits and mental health benefits, or not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit;

(C) If a health benefit plan not previously described in this subdivision includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average aggregate lifetime limit for the applicable lifetime limit.

(2) Annual limits:

(A) If a health benefit plan does not include an annual limit on substantially all medical and surgical benefits, as defined under the terms of the plan but not including mental health benefits, the plan may not impose any annual limit on mental health benefits, as defined under the terms of the plan;

(B) If the health benefit plan limits the total amount that may be paid in a twelve-month period with respect to an individual or other coverage unit for substantially all medical and surgical benefits (in this paragraph, "applicable annual limit"), the plan shall either apply the applicable annual limit to medical and surgical benefits to which it would otherwise apply and to mental health benefits, as defined under the terms of the plan, and not distinguish in the application of the
limit between medical and surgical benefits and mental health benefits, or not include any annual limit on mental health benefits that is less than the applicable annual limit;

(C) If a health benefit plan not previously described in this subdivision includes no or different annual limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average annual limit for the applicable annual limit.

(3) If a group health plan or a health insurer offers a participant or beneficiary two or more benefit package options, this subsection shall apply separately with respect to coverage under each option.

CHAPTER 130

(S.B. 494 - By Senator Minard)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §33-2-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Insurance Commissioner to order restitution in certain cases.

Be it enacted by the Legislature of West Virginia:
That §33-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-11. Enforcement of orders; revocation of licenses; court action.

In addition to examinations and investigations expressly authorized by this chapter, the commissioner may conduct examinations and investigation of insurance matters he or she considers proper to determine whether any person has violated any provision of this chapter or to secure information useful in the lawful administration of his or her duties. If the commissioner determines, after notice and hearing, that any person is transacting insurance in an illegal, improper or unjust manner or is failing to pay losses and obligations when they become due, excepting claims to which there is a substantial defense, he or she may order the person to discontinue the illegal, improper or unjust manner of transacting insurance, to adjust and pay his or her obligations as they become due: Provided, That in any order issued pursuant to subsection (j), section nine of this article or entered as a result of a regulatory enforcement action initiated and prosecuted by the commissioner pursuant to this section or section eleven, article three of this chapter, the commissioner may, in addition to or in lieu of any other penalties or remedies provided therein, order an insurer to pay restitution to affected persons. If a person fails or refuses within twenty days after notice to obey the order, the commissioner may revoke any license issued by the commissioner and held by the person. In addition, the commissioner may apply to the circuit court, or the judge in vacation, having jurisdiction for an injunction or the appointment of a receiver, or for both. The court or judge may enforce the order of the commissioner by injunction or by appointment of a receiver to take charge of the affairs and property of the person, or both, and may make further orders as may be necessary and proper to effectuate the injunction or receivership.
AN ACT to amend and reenact §33-6A-1 of the Code of West Virginia, 1931, as amended, relating to the cancellation of an automobile liability insurance policy for failure of consideration to be paid by the insured upon initial issuance of the insurance policy; requiring written notice to insured; and exceptions.

Be it enacted by the Legislature of West Virginia:

That §33-6A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:
(a) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(b) The policy is obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(1) Has had his or her operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code, regarding consent for a chemical test for intoxication: Provided, That when a license is suspended for sixty days by the Commissioner of the Division of Motor Vehicles because a person drove a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, pursuant to subsection (l), section two of said article, the suspension may not be grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle;

(e) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or forfeits bail during the policy period for any of the following reasons:
39 (1) Any felony or assault involving the use of a motor vehicle;

40 (2) Negligent homicide arising out of the operation of a motor vehicle;

41 (3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

42 (4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

43 (5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

44 (6) Making false statements in an application for a motor vehicle operator's license;

45 (7) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the third moving traffic violation is recorded by the Division of Motor Vehicles.

64 Notwithstanding any of the provisions of this section to the contrary, no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel: Provided, That the insurance policy is voidable from the effective date and time of the
policy issued by the insurer if the insurer cancels the policy for failure of consideration to be paid by the insured upon initial issuance of the insurance policy and provides written notice to the insured of the cancellation within fifteen days of receipt of notice of the failure of consideration and consideration has not otherwise been provided within ten days of the notice of cancellation. Notice of cancellation for nonpayment of consideration shall be delivered to the named insured or sent by first class mail to the named insured at the address supplied on the application for insurance and shall state the effective date of the cancellation and shall be accompanied by a written explanation of the specific reason for the cancellation. If the insurer fails to provide such written notice to the insured, then the cancellation of the policy for failure of consideration is effective upon the expiration of ten days' notice of cancellation to the insured.

CHAPTER 132

(S.B. 434 - By Senator Minard)

[Passed April 10, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-8a, relating to training of insurance producers selling long-term care products; setting minimum standards for long-term care training; and mandating that certain records be retained by companies.

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 §33-12-8a, to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-8a. Producer training for long-term care products; record retention requirements.

(a) (1) No individual may sell, solicit or negotiate long-term care insurance unless he or she is licensed as a producer for accident and sickness insurance in accordance with the provisions of this article and has completed a one-time training course that meets the requirements of subsection (b) of this section: Provided, That a producer selling, soliciting or negotiating long-term care insurance on July 1, 2009 is permitted to continue such activities and must complete the one-time training course prior to July 1, 2010.

(2) In addition to the one-time training course required in subdivision (1) of this subsection, every producer who sells, solicits or negotiates long-term care insurance shall complete ongoing training that meets the requirements of subsection (b) of this section.

(b) (1) The one-time training shall be no less than eight hours.

(2) Beginning July 1, 2010, the ongoing training required by subsection (a) of this section shall be no less than four hours in each mandatory continuing education biennium subsequent to that in which the one-time training was completed.

(3) The training required by this section shall consist of topics related to long-term care insurance, long-term care
services and, if applicable, qualified state long-term care insurance partnership programs, including, but not limited to, state and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid; available long-term services and providers; changes or improvements in long-term care services or providers; alternatives to the purchase of private long-term care insurance; the effect of inflation on benefits and the importance of inflation protection; and consumer suitability standards and guidelines: Provided, That the training required by this section may not include training that is insurer or company product-specific or that includes any sales or marketing information, materials or training, other than those required by state or federal law.

(4) The training required by this section may be approved for continuing education credit by the board of Insurance Agent Education in the manner as set forth in section eight of this article.

(c) An insurer subject to this chapter shall:

(1) Verify that each producer appointed to sell its long-term care products is compliant with this section before the producer is permitted to sell, solicit or negotiate such products; and

(2) Maintain records supporting the verification for five years and make the records available to the commissioner upon request.

(d) If this state participates in the federal Long-Term Care Partnership Program established under the Deficit Reduction Act of 2005, Pub. L. 109-171:
(1) All training required by this section must be approved by the commissioner; and

(2) Any insurer subject to this chapter shall maintain records with respect to the training of its appointed producers that will allow the commissioner to provide assurances to the state Medicaid agency that producers have received the training required by this section and that completion of such training is sufficient to demonstrate that the producer understands partnership policies and their relationship to public and private coverage of long-term care, including Medicaid, in this state.

(e) A nonresident individual producer's satisfaction of another state's training requirements is satisfaction of this section.

CHAPTER 133

(Com. Sub. for S.B. 284 - By Senators Minard and Kessler)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, all relating to viatical settlements; adding alternative means for satisfying financial requirements for the licensing of viatical settlement providers and brokers; and making criminal provisions applicable to any person violating the Viatical Settlements Act.

Be it enacted by the Legislature of West Virginia:
That §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

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

§33-13C-16. Criminal penalties.

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

(a) (1) A person may 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 viated is not 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 the 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 has the 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 of the entity 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 acts in good faith in the capacity of a licensee;

(3) Has a good business reputation and is qualified by experience, training or education as a viatical settlement provider or broker;

(4) Has demonstrated evidence of financial responsibility, in a format prescribed by the commissioner, by possessing a minimum equity of not less than $250,000 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 $250,000: Provided, That the commissioner may
permit an applicant for a broker’s license to demonstrate
evidence of financial responsibility through a policy of
insurance covering legal liability resulting from erroneous
acts or failure to act in their capacity as a viatical settlement
broker and inuring to the benefit of any aggrieved party as
the result of any single occurrence in the sum of not less than
$100,000 and $300,000 in the aggregate for all occurrences
within one year. 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
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. The commissioner may ask for
evidence of financial responsibility at any time he or she
considers it necessary.

(5) If a legal entity has provided a certificate of good
standing from the state of its domicile; and

(6) Has provided an antifraud plan that meets the
requirements of subsection (g), section fourteen of this
article.

(e) The commissioner may 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.
(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.

(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 is not subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection is subject to the penalties imposed by the commissioner.

§33-13C-16. Criminal penalties.

(a) A person 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 $100,000, or both, if the value of the viatical settlement contract is more than $35,000;

(2) Imprisonment in a state correctional facility for not more than ten years or to payment of a fine of not more than $20,000, or both, if the value of the viatical settlement contract is more than $2,500, but not more than $35,000;

(3) Imprisonment in a state correctional facility for not more than five years or payment of a fine of not more than $10,000, or both, if the value of the viatical settlement contract is more than $500, but not more than $2,500.
(S.B. 495 - By Senator Minard)

[Passed April 10, 2009; in effect ninety days from passage.]  
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-14-6, relating to the Insurance Commissioner's authority to permit groups other than those specifically provided in this article to get life insurance policies.

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 §33-14-6, to read as follows:

ARTICLE 14. GROUP LIFE INSURANCE.


The lives of a group of individuals may be insured under a policy issued to a group other than one of the groups
provided in sections two, three, four, five and five-a of this article subject to the following requirements:

(a) The policy shall not be delivered in this state unless the commissioner finds that:

1. The issuance of the policy is not contrary to the best interest of the public;
2. The issuance of the policy would result in economics of acquisition or administration; and
3. The benefits are reasonable in relation to the premiums charged.

(b) No such group life insurance coverage may be offered in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those contained in subsection (a) of this section has made a determination that the requirements have been met.

(c) The premium for the policy shall be paid either from the policyholder’s funds or from funds contributed by the covered persons, or from both.

(d) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.
AN ACT to repeal §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-16-3u; to amend and reenact §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code; and to amend said code by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all relating to health insurance; providing a special enrollment period for continued employee group accident and sickness insurance coverage for certain involuntarily terminated employees and their dependents; providing legislative findings; defining terms; mandating notice to individuals eligible for coverage; providing for a disregard of certain periods for purposes of calculating creditable coverage; establishing a program to provide affordable health care insurance coverage; requiring the Insurance Commissioner to invite carriers and other entities to submit proposals for affordable health insurance plans; defining terms; specifying that plans do not create an entitlement; establishing eligibility and standards for such plans; providing for evaluation of the plans and reports to the Legislature; providing for continuation of existing limited benefit plans; and authorizing emergency and legislative rules.
Be it enacted by the Legislature of West Virginia:

That §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-16-3u; that §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all to read as follows:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.


1 (a) The Legislature finds that recent attempts to assist unemployed persons during the economic downturn beginning at the end of 2008 included a federal initiative to provide subsidies to certain persons who have lost their employer-sponsored health insurance coverage. As part of the American Recovery and Reinvestment Act of 2009, certain involuntarily terminated employees and their dependents were given a second opportunity to elect subsidized COBRA coverage. This federal initiative also included relief to certain persons not covered by the federal COBRA laws, but access to such relief was made dependent on the states acting to require that such persons be given notice of their right to elect such coverage. Therefore, the Legislature intends that this section be interpreted in such a manner as to maximize the opportunity of West Virginians to obtain these much needed subsidies.
(b) **Definitions.** -- As used in this section:

1. "Assistance eligible individual" means any qualified beneficiary who was eligible for continuation coverage between September 1, 2008, and February 17, 2009, due to a covered employee’s termination from employment during this period and who elected such coverage.

2. "Continuation coverage" means accident and sickness insurance coverage offered to persons pursuant to policy provisions required by subsection (e), section three of this article.

3. "Covered employee" means a person who was involuntarily terminated by a small employer between September 1, 2008, and February 16, 2009, and at the time of his or her termination either: (i) Was eligible for but did not elect to enroll in continuation coverage; or (ii) enrolled but subsequently discontinued enrollment in continuation coverage.

4. "Qualified beneficiary" has the same meaning as that term is defined in §607(3) of the Employee Retirement Income Security Act of 1974, 29 U. S. C.§1167(3).

5. "Small employer" means any employer that had fewer than twenty (20) employees during fifty percent (50%) or more of its typical business days in the previous calendar year.

(c) An individual who does not have an election of continuation coverage in effect on February 17, 2009, but who would be an assistance eligible individual if such election were in effect, may elect continuation coverage pursuant to this section. Such election shall be made no later than sixty days after the date the administrator of the group health plan (or other entity involved) provides the notice.
required by Section 3001(a)(7) of the American Recovery and Reinvestment Act of 2009. The administrator of the group health plan (or other entity involved) shall provide such individuals with additional notice of the right to elect coverage pursuant to this subsection prior to April 18, 2009.

(d) Continuation coverage elected pursuant to subsection (c) of this section shall commence with the first period of coverage beginning on or after February 17, 2009: Provided, that continuation coverage elected pursuant to this subsection shall not extend beyond the maximum eighteen-month period provided for by subsection (e), section three of this article.

(e) With respect to an individual who elects continuation coverage pursuant to subsection (b) of this section, the period beginning on the date of the involuntary termination and ending on the date of the first period of coverage on or after February 17, 2009, shall be disregarded for purposes of determining the sixty-three day period referred to in subsection (b), section three-m of this article.

ARTICLE 16F. WEST VIRGINIA AFFORDABLE HEALTH CARE PLAN.

§33-16F-1. Legislative intent.
§33-16F-2. Definitions.
§33-16F-3. Plan proposals; approval of plans.
§33-16F-4. Required plan provisions; grounds for disapproval; alternative plans.
§33-16F-5. Eligibility of individuals and groups.
§33-16F-6. Regulation and marketing of plans.
§33-16F-7. Applicability of certain provisions; commissioner's authority to forbear from applying certain provisions.
§33-16F-8. Assessment of the West Virginia program.
§33-16F-10. Emergency and legislative rules authorized.

§33-16F-1. Legislative intent.

1 The Legislature finds that the inability of a significant number of state residents to obtain affordable health
insurance coverage adversely affects everyone in our state. Therefore, it is the intent of the Legislature to expand the availability of health care options for uninsured residents by developing affordable health care products that emphasize coverage for basic and preventive health care services, provide inpatient hospital and emergency care services and offer optional catastrophic coverage.

§33-16F-2. Definitions.

As used in this article:

"West Virginia affordable health care plan" means a health insurance plan approved under this article.

"West Virginia affordable health care plan entity" or "plan entity" means an entity licensed under this chapter that develops and proposes a West Virginia affordable health care plan and, if the plan is approved, is responsible for administering the plan and paying claims of plan enrollees.

"Enrollee" means an individual who has been determined to be eligible for and is receiving health insurance coverage under a West Virginia affordable health care plan.

§33-16F-3. Plan proposals; approval of plans.

(a) The commissioner shall announce, no later than July 1, 2009, an invitation to prospective West Virginia affordable health care plan entities to submit West Virginia affordable health care plan proposals. The invitation shall include guidelines for the review of West Virginia affordable health care plan applications, policies and associated rates.

(b) In reviewing proposals under this article, the commissioner shall consider the proposed plans’
effectiveness in improving the health status of individuals, their impact on maintaining and improving health and their potential to reduce the unnecessary consumption of health care services.

§33-16F-4. Required plan provisions; grounds for disapproval; alternative plans.

(a) To be approved, plan entities must assure that each proposed plan will provide cost containment through the use of plan design features such as limits on the number of services, caps on benefit payments or copayments for services.

(b) To provide consumer choice, plan entities must develop and submit two alternative benefit option plans having different cost and benefit levels, including at least one plan that provides catastrophic coverage. Plans providing catastrophic coverage must, at a minimum, provide coverage for preventive health services and inpatient hospital stays and may also include coverage of one or more of the following: Hospital emergency care services and outpatient facility services; outpatient surgery; or outpatient diagnostic services.

(c) All plans must offer prescription drug benefit coverage.

(d) Plan enrollment materials must provide information in plain language on policy benefit coverage, benefit limits, cost-sharing requirements, exclusions and a clear representation of what is not covered in the plan. The enrollment materials must include a standard disclosure form developed by the commissioner that must be reviewed and executed by all consumers purchasing West Virginia affordable health care plan coverage.
The commissioner shall disapprove any plan that:

1. Contains any ambiguous, inconsistent or misleading provisions or any exceptions or conditions that deceptively affect or limit the benefits purported to be assumed in the general coverage provided by the plan;

2. Provides benefits that are unreasonable in relation to the premium charged; or

3. Contains provisions that are unfair or inequitable, contrary to the public policy of this state, encourage misrepresentation or result in unfair discrimination in sales practices.

§33-16F-5. Eligibility of individuals and groups.

(a) Individuals. — Eligibility to enroll in an individual West Virginia affordable health care plan is limited to any resident of this state who:

1. Is not covered by a private insurance policy and is not eligible for coverage under an employer-sponsored group plan or through a public health insurance program, such as Medicare, Medicaid or the state Children’s Health Insurance Program; and

2. Has not been covered by any health insurance program at any time during the past six months, unless coverage under a health insurance program was terminated within the previous six months due to loss of a job that provided an employer-sponsored health benefit plan or death of, or divorce from, a spouse who was provided an employer-sponsored health benefit plan or, with respect to a public health insurance program, eligibility for such program was lost due to an inability to meet income or categorical
requirements: Provided, That an individual may not be excluded from enrollment in a West Virginia affordable health care plan on the ground that he or she is eligible for or is enrolled in a COBRA plan.

(b) Group. — An otherwise eligible group may not obtain coverage under a West Virginia affordable health care plan unless the group has not had coverage under any health insurance plan at any time during the previous six months.

§33-16F-6. Regulation and marketing of plans.

1 (a) The commissioner shall issue guidelines to ensure that West Virginia affordable health care plans meet minimum standards for quality of and access to care.

4 (b) Initial filings and changes in West Virginia affordable health care plan benefits, premiums and policy forms are subject to regulatory oversight by the commissioner.

7 (c) The commissioner shall develop a public awareness program to be implemented throughout the state for the promotion of the plans approved under this article, which may include assistance from state health insurance benefits advisors.

12 (d) Each West Virginia affordable health care plan must maintain enrollment data and provide network data and reasonable records to enable the commissioner to assess the plans.

§33-16F-7. Applicability of certain provisions; commissioner's authority to forbear from applying certain provisions.
(a) Individual plans. -- Only the following provisions of article fifteen of this chapter apply to West Virginia entities offering individual plans pursuant to this article: Sections two-a, two-d, two-e, three, four, four-c, four-e, four-f, four-g, five, six, seven, eight, nine, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty. Notwithstanding any other provision of this code, the provisions of article twenty-eight of this chapter and legislative rules regulating individual accident and sickness policies, including the rule contained in series 12, title 114 of the West Virginia Code of State Rules, do not apply to individual plans issued pursuant to this article unless and to the extent specifically incorporated in rules promulgated pursuant to the authority conferred by section eleven of this article.

(b) Group plans. -- Only the following provisions of article sixteen of this chapter apply to insurers offering group plans pursuant to this article: Sections one-a, three, three-g, three-j, three-k, three-l, three-m, three-n, three-o, three-p, four, five, six, seven, nine, ten, eleven, twelve, thirteen, fourteen and fifteen; all other provisions of article sixteen do not apply to group plans approved pursuant to this article unless and to the extent the provisions are specifically incorporated in rules promulgated by the commissioner. Notwithstanding any other provision of this code or of the code of state rules, the provisions of article sixteen-e of this chapter and of legislative rules regulating group accident and sickness policies, including the rule set forth in series 39, title 114 of the West Virginia Code of State Rules, do not apply to group plans approved pursuant to this article unless and to the extent specifically incorporated in rules promulgated by the commissioner pursuant to the authority conferred by section eleven of this article.

(c) Small group plans. -- With respect to any group plan approved under this article and offered to any "small
employer", as that term is defined in section two, article sixteen-d of this chapter, the following provisions of article sixteen-d apply: Sections two, four, seven, eight, twelve, thirteen and fourteen: Provided, That only the sentence preceding the proviso in section thirteen, article sixteen-d of this chapter applies to small employer plans approved pursuant to this article. Notwithstanding any other provision of this code, all other provisions of article sixteen-d of this chapter do not apply to small employer plans approved pursuant to this article unless and to the extent such provisions are specifically incorporated in rules promulgated by the commissioner.

(d) Forbearance by the commissioner. -- The commissioner may forbear from applying any other statutory or regulatory requirements to an insurer offering an individual or group plan approved pursuant to this article, including any requirements in articles twenty-four and twenty-five-a of this chapter, if he or she determines that such forbearance serves the principles set forth in section one of this article.

(e) Existing limited benefit plans. -- Plans approved pursuant to the provisions of article fifteen-d of this chapter, as that article existed prior to its repeal during the 2009 regular legislative session, and this article, as that it existed prior to its amendment and reenactment during the 2009 regular legislative session, remain in effect and are subject to those provisions.

§33-16F-8. Assessment of the West Virginia program.

The commissioner shall:

(1) Provide an assessment of the West Virginia affordable health care plans and their potential applicability in other settings;
(2) Use West Virginia affordable health care plans to gather more information to evaluate low-income, consumer-driven benefit packages; and

(3) Submit by March 1, 2011, and annually thereafter, a report to the Governor, the President of the Senate and the Speaker of the House of Delegates that provides the information specified in this section and recommendations relating to the successful implementation and administration of the program.


Coverage under a West Virginia affordable health care plan is not an entitlement and a cause of action does not arise against the state, a local government entity, any other political subdivision of the state or any agency for failure to make coverage available to eligible persons under this article.

§33-16F-10. Emergency and legislative rules authorized.

The commissioner may promulgate emergency and legislative rules under the provisions of article three, chapter twenty-nine-a of this code, to prescribe requirements regarding rate making, which may include rules establishing loss ratio standards for the plans; to place limitations on eligibility for coverage under the approved plans; to establish standards to determine whether a plan qualifies as creditable coverage; to determine what medical treatments, procedures and related health services benefits must be included in the plans; and to provide for any other matters deemed necessary to further the intent of this article.
AN ACT to amend and reenact §33-15E-15 of the Code of West Virginia, 1931, as amended, relating to the criminal offenses for failing to provide benefits of a discount medical plan or discount prescription drug plan; clarifying that the severity of the offense is dependant on the total of fees collected; and providing for an alternate sentence upon conviction of the felony offense.

Be it enacted by the Legislature of West Virginia:

That §33-15E-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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


1 (a) A 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 $20,000 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) No person shall collect a fee for purported
membership in a discount medical plan or discount
prescription drug plan and knowingly and willfully fail to
provide the promised benefits of the plan. (1) Any person
who violates this subsection and in doing so collects fees
totaling $1,000 or more is guilty of a felony and, upon
conviction thereof, shall be fined not more than $2,500 or
imprisoned in a state correctional facility not less than one
nor more than ten years or, in the discretion of the court, be
confined in jail for not more than one year, or both fined and
imprisoned or confined.

(2) Any person who violates this subsection and in doing
so collects fees totaling less than $1,000 is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
more than $2,500 or confined in jail not more than one year,
or both fined and confined.

CHAPTER 137

(S.B. 431 - By Senators Minard, Helmick, McCabe
and Barnes)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]

AN ACT to amend and reenact §33-16D-16 of the Code of West
Virginia, 1931, as amended, relating to notice to in-state
medical providers of the participation provisions of the small
group health benefit plan.
Be it enacted by the Legislature of West Virginia:

That §33-16D-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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


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

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

(2) If a small employer covered by a health benefit plan offered pursuant to this section no longer meets the definition of a small employer as a result of an increase in eligible employees, that employer shall remain covered by the health benefit plan until the next annual renewal date;
(3) The small employer shall pay at least fifty percent of its employees’ premium amount for individual employee coverage;

(4) The commissioner shall promulgate emergency rules under the provisions of article three, chapter twenty-nine-a of this code on or before September 1, 2004, to place additional restrictions upon the eligibility requirements for health benefit plans authorized by this section in order to prevent manipulation of eligibility criteria by small employers and otherwise implement the provisions of this section;

(5) Carriers must offer the health benefit plans issued pursuant to this section through one of their existing networks of health care providers;

(A) The West Virginia Health Care Authority shall, on or before May 1, 2004, and each year thereafter, by regular mail, provide a written notice to all known in-state health care providers that:

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

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

(B) The carrier’s network of health care providers, as well as any health care provider which provides health care goods or services to beneficiaries of any departments or divisions of the state, as identified in article twenty-nine-d, chapter sixteen of this code, shall accept the health care
provider reimbursement rates set pursuant to this section unless the health care provider gives written refusal to the West Virginia Health Care Authority between May 1 and June 1 that the provider will not participate in this program for the next calendar year. Notwithstanding any provision of this code to the contrary, health care providers may not be mandated to participate in this program except under the opt-out provisions of subdivision (5), subsection (a) of this section and therefore the health care provider shall annually have the ability to file with the West Virginia Health Care Authority written notice that the health care provider will not participate with products issued pursuant to this section. Once a health care provider has filed a notice of refusal with the West Virginia Health Care Authority, the notice shall remain effective until rescinded by the provider and the provider shall not be required to renew the notice each year;

(C) The West Virginia Health Care Authority is responsible for receiving the responses, if any, from the health care providers that have elected not to participate and for providing a list to the commissioner of those health care providers that have elected not to participate;

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

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

(6) With respect to the health benefit plans authorized by this section, the carrier shall reimburse network health care
providers at the same health care provider reimbursement rates in effect for the managed care and health maintenance organization plans offered by the West Virginia Public Employees Insurance Agency. Beginning in the year 2004, and in each year thereafter, the health care provider reimbursement rates set under this section may not be lowered from the level of the rates in effect on the July 1 of that year for the managed care and health maintenance plans offered by the Public Employees Insurance Agency. While it is the intent of this paragraph to govern rates for plans offered pursuant to this section for annual periods, this paragraph in no way prevents the Public Employees Insurance Agency from making provider reimbursement rate adjustments to Public Employees Insurance Agency plans during the course of each year. If there is a dispute regarding the determination of appropriate rates pursuant to this section, the Director of the Public Employees Insurance Agency shall, in his or her sole discretion, specify the appropriate rate to be applied;

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

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

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

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

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

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

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

(11) Upon thirty days’ advance notice to the commissioner, a carrier may, at any time, elect to nonrenew all health benefit plans issued pursuant to this section. If a carrier nonrenews all its business issued pursuant to this section for any reason other than the adequacy of the provider network, the carrier may not offer this health benefit plan to any eligible small employer for a period of at least two years after the last eligible small employer is nonrenewed; and
(12) The Insurance Commissioner may not approve any health benefit plan issued pursuant to this section until it has obtained any necessary federal governmental authorizations or waivers. The Insurance Commissioner shall apply for and obtain all necessary federal authorizations or waivers.

(b) Health benefit plans authorized by this section are not intended to violate the prohibition set out in subsection (a), section four of this article.

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

(d) Carriers offering health benefit plans pursuant to this section shall annually or before December 1 of each year report in a form acceptable to the commissioner the number of health benefit plans written by the carrier and the number of individuals covered under the health benefit plans.

(e) To the extent that provisions of this section differ from those contained elsewhere in this chapter, the provisions of this section control.
AN ACT to amend and reenact §33-25D-2 of the Code of West Virginia, 1931, as amended, relating to prepaid limited health service organizations; adding dental, vision, pharmaceutical and podiatric services to those services that may be offered by prepaid limited health service organizations.

Be it enacted by the Legislature of West Virginia:

That §33-25D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.


1 (a) “Capitation” means the fixed amount paid by a prepaid limited health service organization to a health care provider under contract with the prepaid limited health service organization in exchange for the rendering of no more than four limited health services.

6 (b) “Commissioner” means the Commissioner of Insurance.
(c) "Consumer" means any person who is not a provider of care or an employee, officer, director or stockholder of any provider of care.

(d) "Coordinating provider" means the provider of a particular limited health service who is chosen or designated for each subscriber and who will be responsible for coordinating the provision of that particular limited health service to the subscriber, including necessary referrals to other providers of the limited health service: Provided, That if a subscriber is also enrolled in a health maintenance organization, the coordinating provider shall send a written report at least annually to the subscriber's primary care physician, as defined in article twenty-five-a of this chapter, describing the limited health service provided to the subscriber: Provided, however, That the coordinating provider may disclose data or information only as permitted under section twenty-eight of this article.

(e) "Copayment" means a specific dollar amount, except as otherwise provided by statute, that the subscriber must pay upon receipt of covered limited health services and which is set at an amount consistent with allowing the subscriber access to covered limited health services.

(f) "Employee" means a person in some official employment or position working for a salary or wage continuously for no less than one calendar quarter and who is in such a relation to another person that the latter may control the work of the former and direct the manner in which the work is done.

(g) "Employer" means any individual, corporation, partnership, other private association, or state or local government that employs the equivalent of at least two full-time employees during any four consecutive calendar quarters.
(h) “Enrollee,” “subscriber,” or “member” means an individual who has been voluntarily enrolled in a prepaid limited health service organization, including individuals on whose behalf a contractual arrangement has been entered into with a prepaid limited health service organization to receive no more than four limited health services.

(i) “Evidence of coverage” means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.

(j) “Group practice” means a professional corporation, partnership, association, or other organization composed solely of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals, including podiatrists, dentists, optometrists and chiropractors, as are necessary for the provision of limited health services for which the group is responsible:

(1) A majority of the members of which are licensed to practice medicine, osteopathy or chiropractic;

(2) Who as their principal professional activity engage in the coordinated practice of their profession;

(3) Who pool their income for practice as members of the group and distribute it among themselves according to a prearranged salary, drawing account or other plan; and

(4) Who share medical and other records and substantial portions of major equipment and professional, technical and administrative staff.

(k) “Impaired” means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the prepaid limited health service organization's annual statement, the
assets of the prepaid limited health service organization are
less than the sum of all of its liabilities and required reserves
including any minimum capital and surplus required of the
prepaid limited health service organization by this chapter so
as to maintain its authority to transact the kinds of business
or insurance it is authorized to transact.

(l) “Individual practice arrangement” means any
agreement or arrangement to provide medical services on
behalf of a prepaid limited health service organization among
or between providers or between a prepaid limited health
service organization and individual providers or groups of
providers, where the providers are not employees or partners
of the prepaid limited health service organization and are not
members of or affiliated with a group practice.

(m) “Insolvent” or “insolvency” means a financial
situation in which, based upon the financial information
which would be required by this chapter for the preparation
of the prepaid limited health service organization's annual
statement, the assets of the prepaid limited health service
organization are less than the sum of all of its liabilities and
required reserves.

(n) “Limited health service” means mental or behavioral
health services (including mental illness, mental retardation,
developmental disabilities, substance abuse, and chemical
dependency services), dental care services, vision care
services, podiatric care services, pharmaceutical services
(including Medicare prescription drug plans), together with
any services or goods included in the furnishing to any
individual of a limited health service. “Limited health
service” does not include inpatient services, hospital surgical
services or emergency services except as such services are
provided incident to and directly related to a limited health
service set forth in this subsection.
(o) “Premium” means a prepaid per capita or prepaid aggregate fixed sum unrelated to the actual or potential utilization of services of any particular person which is charged by the prepaid limited health service organization for health services provided to an enrollee.

(p) “Prepaid limited health service organization” means a public or private organization which provides, or otherwise makes available to enrollees, no more than four limited health services and which:

1. Receives premiums for the provision of no more than four limited health services to enrollees on a prepaid per capita or prepaid aggregate fixed sum basis, excluding copayments;

2. Provides no more than four limited health services primarily:
   
   A. Directly through an exclusive panel of physicians or other providers who are employees or partners of the organization;
   
   B. Through arrangements with individual physicians or other providers or one or more groups of physicians or other providers organized on a group practice or individual practice arrangement; or
   
   C. Some combination of paragraphs (A) and (B) of this subdivision;

3. Assures the availability, accessibility and quality, including effective utilization, of the limited health service or services that it provides or makes available through clearly identifiable focal points of legal and administrative responsibility; and
(4) Offers services through an organized delivery system, in which a coordinating provider of a limited health service is designated for each subscriber to that limited health service. Prepaid limited health service organization does not include an entity otherwise authorized pursuant to the laws of this state to indemnify for any limited health service, or a provider or entity when providing a limited health service pursuant to a contract with a prepaid limited health service organization, a health maintenance organization, a health insurer or a self-insurance plan.

(q) “Provider” means any physician or other person or organization licensed or otherwise authorized in this state to furnish a limited health service.

(r) “Qualified independent actuary” means an actuary who is a member of the American academy of actuaries or the society of actuaries and has experience in establishing rates for prepaid limited health service organizations and who has no financial or employment interest in the prepaid limited health service organization.

(s) “Quality assurance” means an ongoing program designed to objectively and systematically monitor and evaluate the quality and appropriateness of the enrollee's care, pursue opportunities to improve the enrollee's care, and resolve identified problems at the prevailing professional standard of care.

(t) “Service area” means the county or counties approved by the commissioner within which the prepaid limited health service organization may provide or arrange for a limited health service to be available to its subscribers.

(u) “Statutory surplus” means the minimum amount of unencumbered surplus which a corporation must maintain pursuant to the requirements of this article.
(v) “Surplus” means the amount by which a corporation's assets exceed its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the corporation's annual statement except that assets pledged to secure debts not reflected on the books of the prepaid limited health service organization shall not be included in surplus.

(w) “Surplus notes” means debt which has been subordinated to all claims of subscribers and all creditors of the organization.

(x) “Uncovered expenses” means the cost of a limited health service covered by a prepaid limited health service organization, for which a subscriber would also be liable in the event of the insolvency of the organization.

(y) “Utilization management” means a system for the evaluation of the necessity, appropriateness, and efficiency of the use of health care services, procedures and facilities.

CHAPTER 139

(Com. Sub. for H.B. 3278 - By Delegates Perry, Ashley and Moore)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §33-26A-3, §33-26A-5, §33-26A-6, §33-26A-8, §33-26A-9, §33-26A-10 and §33-26A-18 of the Code of West Virginia, 1931, as amended, all relating to the life and health insurance guaranty association; making specific
provision for treatment of unallocated annuity contracts and structured settlement contracts; providing how payments to residents and nonresidents are determined; providing that duplicate payments not be made; excluding certain policies, portions of policies and obligations from coverage; setting new limits on coverage for various types of policies and contracts; defining terms; changing the composition of the annuity and unallocated annuity accounts; eliminating the association’s power to make loans to an insolvent insurer and making other changes to its powers and duties; increasing the permissible maximum annual pro rata assessment; setting forth a process for the protest of assessments; mandating that members comply with requests for information from the association; requiring that the plan of operation include provisions for removing a director for cause and addressing conflicts of interest; and increasing the length of the stay of court proceedings involving an insolvent insurer.

Be it enacted by the Legislature of West Virginia:

That §33-26A-3, §33-26A-5, §33-26A-6, §33-26A-8, §33-26A-9, §33-26A-10 and §33-26A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.


§33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.


§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.

(a) This article shall provide coverage for the policies and contracts specified in subsection (b) of this section:
3 (1) To persons who, regardless of where they reside, are
4 the beneficiaries, assignees or payees of the persons covered
5 under subdivision (2) of this subsection: Provided, That the
6 provisions of this subdivision shall not apply to nonresident
7 certificate holders under group policies or contracts;

8 (2) To persons who are owners of or certificate holders
9 under such policies or contracts, other than unallocated
10 annuity contracts and structured settlement annuities, and in
11 each case who:

12 (A) Are residents of this state; or

13 (B) Are not residents of this state, but only under all of
14 the following conditions:

15 (i) The insurer that issued the policies or contracts is
16 domiciled in this state;

17 (ii) The states in which the persons reside have
18 associations similar to the association created by this article;
19 and

20 (iii) The persons are not eligible for coverage by an
21 association in any other state because the insurer was not
22 licensed in the state at the time specified in the state’s
23 guaranty association law.

24 (3) For unallocated annuity contracts specified in
25 subdivisions (1) and (2), subsection (b) of this section shall
26 not apply, and this article shall, except as provided in
27 subdivisions (5) and (6) of this subsection, provide coverage
28 to:

29 (A) Persons who are the owners of the unallocated
30 annuity contracts if the contracts are issued to or in
connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(B) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents.

(4) For structured settlement annuities specified in subdivisions (1) and (2), subsection (b) of this section shall not apply, and this article shall, except as provided in subdivisions (5) and (6) of this subsection, provide coverage to a person who is a payee under a structured settlement annuity or beneficiary of a payee if the payee is deceased, if the payee:

(A) Is a resident, regardless of where the contract owner resides; or

(B) Is not a resident, but only under both of the following conditions:

(i) (I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by this article; and

(ii) Neither the payee or beneficiary nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.

(5) This article shall not provide coverage to:

(A) A person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state; or
(B) A person covered under subdivision (3) of this subsection, if any coverage is provided by the association of another state to the person.

(6) This article is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this article is provided coverage under the laws of any other state, the person shall not be provided coverage under this article. In determining the application of the provisions of this subdivision in situations where a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary or assignee, this article shall be construed in conjunction with other state laws to result in coverage by only one association.

(b) Coverage as provided by this article shall be as follows:

(1) This article shall provide coverage to the persons specified in subsection (a) of this section for direct, nongroup life, health, and annuity policies or contracts, for any supplemental policies to the foregoing, for certificates under direct group policies and contracts, and for unallocated annuity contracts, issued by member insurers, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued in connection with government lotteries and any immediate or deferred annuity contracts.

(2) This article shall not provide coverage for:

(A) A portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner;
(B) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(C) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this article, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this article, whichever is earlier; and

(ii) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this article, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(D) A portion of a policy or contract issued to a plan or program of an employer, association or other person to provide life, health or annuity benefits to its employees, members or others, to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association or other person under:

(ii) A minimum premium group insurance plan;

(iii) A stop-loss group insurance plan; or

(iv) An administrative services only contract;

(E) A portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(F) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(G) An unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan; and

(H) A portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union or association of natural persons benefit plan or a government lottery.

(I) A portion of a policy or contract to the extent that the assessments required by section nine of this article with respect to the policy or contract are preempted by federal or state law;

(J) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer
to the contract owner or policy owner, including without limitation:

(i) Claims based on marketing materials;

(ii) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(iii) Misrepresentations of or regarding policy benefits;

(iv) Extra-contractual claims; or

(v) A claim for penalties or consequential or incidental damages;

(K) A contractual agreement that establishes the member insurer’s obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

(L) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner’s rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this article, whichever is earlier. If a policy’s or contract’s interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or
changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

(M) A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C & D) or any regulations issued pursuant thereto.

c) The benefits that the association may become liable for shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Three hundred thousand dollars in life insurance death benefits, but no more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) In health insurance benefits:

(I) One hundred thousand dollars for coverages not defined as disability insurance or basic hospital, medical and surgical insurance or major medical insurance or long-term care insurance as defined in section four, article fifteen-a, of this chapter, including any net cash surrender and net cash withdrawal values;

(II) Three hundred thousand dollars for disability insurance and $300,000 for long-term care insurance as defined in section four, article fifteen-a of this chapter;

(III) $500,000 for basic hospital, medical and surgical insurance or major medical insurance; or
(iii) $250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(B) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b) or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, $250,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values.

(C) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, $250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal value;

(D) However, in no event shall the association be obligated to cover more than:

(i) An aggregate of $300,000 in benefits with respect to any one life under paragraphs (A), (B) and (C) of this subdivision except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance under subparagraph (ii), paragraph (A) of this subdivision, in which case the aggregate liability of the association shall not exceed $500,000 with respect to any one individual, or

(ii) With respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, more than $5 million in benefits, regardless of the number of policies and contracts held by the owner.

(E) With respect to either one contract owner provided coverage under paragraph (B), subdivision (3), subsection (a)
of this section or one plan sponsor whose plans own directly
or in trust one or more unallocated annuity contracts not
included in paragraph (B), subdivision (2) of this subsection,
$5 million in benefits, irrespective of the number of contracts
with respect to the contract owner or plan sponsor. However,
in the case where one or more unallocated annuity contracts
are covered contracts under this article and are owned by a
trust or other entity for the benefit of two or more plan
sponsors, coverage shall be afforded by the association if the
largest interest in the trust or entity owning the contract or
contracts is held by a plan sponsor whose principal place of
business is in this state. In no event shall the association be
obligated to cover more than $5 million in benefits with
respect to all of these unallocated contracts.

(F) The limitations set forth in this subsection are
limitations on the benefits for which the association is
obligated before taking into account either its subrogation
and assignment rights or the extent to which those benefits
could be provided out of the assets of the impaired or
insolvent insurer attributable to covered policies. The costs
of the association’s obligations under this article may be met
by the use of assets attributable to covered policies or
reimbursed to the association pursuant to its subrogation and
assignment rights.

(d) In performing its obligations to provide coverage
under section eight of this article, the association shall not be
required to guarantee, assume, reinsure or perform, or cause
to be guaranteed, assumed, reinsured or performed, the
contractual obligations of the insolvent or impaired insurer
under a covered policy or contract that do not materially
affect the economic values or economic benefits of the
covered policy or contract.

As used in this article:

(1) "Account" means either of the two accounts created under section six of this article.

(2) "Association" means the West Virginia Life and Health Insurance Guaranty Association created under section six of this article.

(3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(4) "Basic hospital, medical and surgical insurance or major medical insurance" means accident and sickness insurance subject to the provisions of articles fifteen and sixteen of this chapter and benefits provided by articles twenty-four and twenty-five of this chapter, but excludes any accident and sickness insurance in which the medical care is secondary or incidental to other benefits and also excludes insurance included within the definition of excluded benefits set forth in subsection (f), section one-a, article sixteen of this chapter.

(5) "Benefit plan" means a specific employee, union or association of natural persons benefit plan.

(6) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
(7) “Commissioner” means the Commissioner of Insurance of this state.

(8) “Contractual obligation” means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section three of this article.

(9) “Covered policy” means any policy or contract within the scope of this article under section three of this article.

(10) “Extra-contractual claims” shall include claims such as those relating to bad faith in the payment of claims, punitive or exemplary damages or attorneys’ fees and costs.

(11) “Impaired insurer” means a member insurer which, after the effective date of this article, is not an insolvent insurer, and (1) is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or (2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(12) “Insolvent insurer” means a member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(13) “Member insurer” means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section three of this article, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, and includes nonprofit service corporations as defined in article twenty-four of this chapter and health care corporations as defined in article twenty-five of this chapter but does not include:
(A) A health maintenance organization;

(B) A fraternal benefit society;

(C) A mandatory state pooling plan;

(D) A mutual assessment company or any entity that operates on an assessment basis;

(E) An insurance exchange;

(F) An organization which has a certificate or license limited to the issuance of charitable gift annuities under article thirteen-b of this chapter; or

(G) Any entity similar to any of the above.

(14) “Moody's Corporate Bond Yield Average” means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(15) “Owner” of a policy or contract and “policy owner” and “contract owner” mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms owner, contract owner and policy owner do not include persons with a mere beneficial interest in a policy or contract.

(16) “Person” means any individual, corporation, partnership, association or voluntary organization.

(17) “Plan sponsor” means:

(A) The employer in the case of a benefit plan established or maintained by a single employer;
(B) The employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) In a case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(18) "Premiums" means amounts or considerations (by whatever name called) received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. "Premiums" does not include any amounts or considerations received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection (b), section three of this article, except that assessable premium shall not be reduced on account of paragraph (C), subdivision (2), subsection (b), section three of this article relating to interest limitations and subdivision (2), subsection (c), section three of this article relating to limitations with respect to any one individual, any one participant and any one contract owner. Premiums shall not include:

(A) Premiums in excess of $5 million on any unallocated annuity contract not issued under a government retirement plan established under section 401, 403(b) or 457 of the United States Internal Revenue Code; or

(B) With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of $5 million with respect
to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(19) (A) “Principal place of business” of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(iv) The state in which the executive or management committee of the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed;

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors; and

(vii) In the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in
152 a single state, that state shall be deemed to be the principal
153 place of business of the plan sponsor.
154 (B) The principal place of business of a plan sponsor of
155 a benefit plan described in paragraph (C), subdivision (16) of
156 this section shall be deemed to be the principal place of
157 business of the association, committee, joint board of trustees
158 or other similar group of representatives of the parties who
159 establish or maintain the benefit plan that, in lieu of a specific
160 or clear designation of a principal place of business, shall be
161 deemed to be the principal place of business of the employer
162 or employee organization that has the largest investment in
163 the benefit plan in question.
164 (20) “Receivership court” means the court in the
165 insolvent or impaired insurer’s state having jurisdiction over
166 the conservation, rehabilitation or liquidation of the insurer.
167 (21) “Resident” means a person to whom a contractual
168 obligation is owed and who resides in this state on the date of
169 entry of a court order that determines a member insurer to be
170 an impaired insurer or a court order that determines a
171 member insurer to be an insolvent insurer, whichever occurs
172 first. A person may be a resident of only one state, which in
173 the case of a person other than a natural person shall be its
174 principal place of business. Citizens of the United States that
175 are either residents of foreign countries, or residents of
176 United States possessions, territories, or protectorates that do
177 not have an association similar to the association created by
178 this article, shall be deemed residents of the state of domicile
179 of the insurer that issued the policies or contracts.
180 (22) “Structured settlement annuity” means an annuity
181 purchased in order to fund periodic payments for a plaintiff
182 or other claimant in payment for or with respect to personal
183 injury suffered by the plaintiff or other claimant.
(23) “Health insurance” means accident and sickness insurance as defined in subsection (b), section ten, article one of this chapter and benefits provided pursuant to articles twenty-four and twenty-five of this chapter.

(24) “Supplemental contract” means any agreement entered into for the distribution of policy or contract proceeds.

(25) “Unallocated annuity contract” means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

§33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.

(a) There is created a nonprofit legal entity to be known as the West Virginia Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section ten of this article and shall exercise its powers through a board of directors established under section seven of this article. For purposes of administration and assessment, the association shall maintain the following two accounts:

(1) The life insurance and annuity account which includes the following subaccounts:

(A) Life insurance account;

(B) Annuity account which shall include annuity contracts owned by a governmental retirement plan or its
trustee established under section 401, 403(b) or 457 of the
United States Internal Revenue Code, but shall otherwise
exclude unallocated annuities; and

(C) Unallocated annuity account which shall exclude
contacts owned by a governmental retirement plan or its
trustee established under section 401, 403(b) or 457 of the
United States Internal Revenue Code.

(2) The health insurance account.

(b) The association shall come under the immediate
supervision of the commissioner and shall be subject to the
applicable provisions of the insurance laws of this state.
Meetings or records of the association may be opened to the
public upon majority vote of the board of directors of the
association.


(a) If a member insurer is an impaired insurer, the
association may, in its discretion, and subject to any
conditions imposed by the association that do not impair the
contractual obligations of the impaired insurer, that are
approved by the commissioner:

(1) Guarantee, assume, or reinsure, or cause to be
guaranteed, assumed or reinsured, any or all of the covered
policies or contracts of the impaired insurer; or

(2) Provide such moneys, pledges, notes, guarantees or
other means as are proper to effectuate subdivision (1) of this
subsection and assure payment of the contractual obligations
of the impaired insurer pending action under said subdivision
(1).

(b) If a member insurer is an insolvent insurer, the
association shall, in its discretion, either:
(1) (A) (i) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer; or

(ii) Assure payment of the contractual obligations of the insolvent insurer; and

(B) Provide moneys, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or

(2) Provide benefits and coverages in accordance with the following provisions:

(A) With respect to life and health insurance policies and annuities assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies and contracts;

(ii) With respect to nongroup policies, contracts and annuities, not later than the earlier of the next renewal date, if any, under these policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to such policies or contracts;

(B) Make diligent efforts to provide all known insureds or annuitants or group policyholders with respect to group policies and contracts thirty days' notice of the termination of the benefits provided pursuant to paragraph (A) of this subdivision; and
(C) With respect to nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (D) of this subdivision, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(D)(i) In providing the substitute coverage required under paragraph (C) of this subdivision, the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(ii) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any alternative or reissued policy.

(E)(i) Alternative policies adopted by the association shall be subject to the approval of the domiciliary commissioner and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.
(ii) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(F) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary commissioner and the receivership court.

(G) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date that the coverage or policy is replaced by another similar policy by the policyholder, the insured or the association.

(H) When proceeding under subdivision (2) of this subsection with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with paragraph (C), subdivision (2), subsection (b), section three of this article.

(c) Nonpayment of premium within thirty-one days after the date required under the terms of any guaranteed,
assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under such policy or coverage under this article with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this article.

(d) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association. If the liquidator of an insolvent insurer requests, the association shall provide a report to the liquidator regarding such premium collected by the association. The association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(e) The protection provided by this article shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(f) In carrying out its duties under subsection (b) of this section, the association may, subject to approval by a court in this state:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association's duties under this article, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest;

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to
withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(g) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to article ten of this chapter, shall be promptly paid to the association. The association shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners’ claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association less the amount retained pursuant to this subsection. Any amount so paid to the association and retained by it shall be treated as a distribution of estate assets pursuant to article ten of this chapter.

(h) If the association fails to act within a reasonable period of time with respect to an insolvent insurer as provided in subsection (b) of this section, the commissioner
shall have the powers and duties of the association under this article with respect to the insolvent insurer.

(i) The association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(j) The association shall have standing to appear or intervene before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation of the insurer’s policyholders, payees or beneficiaries.

(k)(1) Any person receiving benefits under this article shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured or
annuitant as a condition precedent to the receipt of any right or benefits conferred by this article upon such person.

(2) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this article.

(3) In addition to subdivisions (1) and (2) of this subsection, the association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner or insured of a policy or contract with respect to such policy or contracts.

(1) In addition to the rights and powers elsewhere in this article, the association may:

(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section nine of this article and to settle claims or potential claims against it;

(3) Borrow money to effect the purpose of this article; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this article;

(5) Take such legal action as may be necessary to avoid or recover payment of improper claims;
(6) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this article;

(7) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(8) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this article with respect to the person, and the person shall promptly comply with the request; and

(9) Take other necessary or appropriate action to discharge its duties and obligations under this article or to exercise its powers under this article.

(m) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(n) (1) (A) At any time within one hundred eighty days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.
(B) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(C) The following shall apply to reinsurance contracts so assumed by the association:

(i) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the association. The association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator;

(ii) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under
the policy or annuity on account of which the amounts were paid a portion of the amount equal to lesser of:

(I) The amount received by the association; and

(II) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or annuity less the retention of the insurer applicable to the loss or event.

(iii) Within thirty days following the association’s election (the “election date”), the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subparagraph (ii) of this paragraph, the receiver shall remit the same to the association as promptly as practicable.

(iv) If the association or receiver, on the association’s behalf, within sixty days of the election date, pays the unpaid premiums due for periods both before and after the election
(2) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until one hundred eighty days after the date of the order of liquidation:

(A) (i) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under subdivision (1) of this subsection, whether for periods prior to or after the date of the order of liquidation; and

(ii) The reinsurer, the receiver and the association shall, to the extent practicable, provide each other data and records reasonably requested;

(B) Provided that once the association has elected to assume a reinsurance contract, the parties’ rights and obligations shall be governed by subdivision (1) of this subsection.

(3) If the association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (1) of this subsection, the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.
(4) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the association, in the case of contracts assumed under subdivision (1) of this subsection, subject to the following:

(A) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

(B) The obligations described in subdivision (1) of this subsection shall no longer apply with respect to matters arising after the effective date of the transfer; and

(C) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty days prior to the effective date of the transfer.

(5) The provisions of this subsection shall supersede the provisions of any law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(6) Except as otherwise provided in this subsection, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this subsection shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract.
Nothing in this subsection shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this subsection shall limit or affect the association’s rights as a creditor of the estate against the assets of the estate. Nothing in this subsection shall apply to reinsurance agreements covering property or casualty risks.

(o) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this article in an economical and efficient manner.

(p) Where the association has arranged or offered to provide the benefits of this article to a covered person under a plan or arrangement that fulfills the association’s obligations under this article, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(q) Venue in a suit against the association arising under the article shall be in Kanawha County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this act.

(r) In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under subsections (a) or (b) of this section, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:
(1) In lieu of the index or other external reference provided in the original policy or contract, the alternative policy or contract provides for:

(i) A fixed interest rate;

(ii) Payment of dividends with minimum guarantees; or

(iii) A different method for calculating interest or changes in value;

(2) There is no requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract; and

(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.


(a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at ten percent per annum on and after the due date.

(b) There shall be two assessments, as follows:

(1) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.
(2) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under section eight of this article with regard to an impaired or insolvent insurer.

(c)(1) The amount of any Class A assessment shall be determined by the board and may be authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A nonpro rata assessment shall not exceed $300 per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this article. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata
share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(e) (1) (A) Subject to the provisions of paragraph (B) of this subdivision, the total of all assessments upon a member insurer for each subaccount of the life and annuity account and for the health account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(B) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in paragraph (A) of this subdivision shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

(C) If the maximum assessment, together with the other assets of the association in an account, does not provide in
any one year in either account an amount sufficient to carry
out the responsibilities of the association, the necessary
additional funds shall be assessed as soon thereafter as
permitted by this article.

(2) The board may provide in the plan of operation a
method of allocating funds among claims, whether relating to
one or more impaired or insolvent insurers, when the
maximum assessment will be insufficient to cover anticipated
claims.

(3) If the maximum assessment for any subaccount of the
life and annuity account in any one year does not provide an
amount sufficient to carry out the responsibilities of the
association, then pursuant to subdivision (2), subsection (c)
of this section, the board shall assess all subaccounts of the
life and annuity account for the necessary additional amount,
subject to the maximum stated in subdivision (1), subsection
(e) of this section.

(f) The board may, by an equitable method as established
in the plan of operation, refund to member insurers, in
proportion to the contribution of each insurer to that account,
the amount by which the assets of the account exceed the
amount the board finds is necessary to carry out during the
coming year the obligations of the association with regard to
that account, including assets accruing from assignment,
subrogation, net realized gains and income from investments.
A reasonable amount may be retained in any account to
provide funds for the continuing expenses of the association
and for future claims.

(g) It shall be proper for any member insurer, in
determining its premium rates and policy owner dividends as
to any kind of insurance within the scope of this article, to
consider the amount reasonably necessary to meet its
assessment obligations under this article.
(h) The association shall issue to each insurer paying an assessment under this article, other than Class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(i) (1) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(2) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(3) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.
(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

(j) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.


(a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless he or she has not disapproved of the same within thirty days.

(2) If the association fails to submit a suitable plan of operation within one hundred eighty days following the effective date of this article or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this article:

(1) Establish procedures for handling the assets of the association;
(2) Establish the amount and method of reimbursing members of the board of directors under section seven of this article;

(3) Establish regular places and times for meetings including telephone conference calls of the board of directors;

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(6) Establish any additional procedures for assessments under section nine of this article;

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association;

(8) Establish procedures whereby a director may be removed for cause, including in the case where a member insurer director becomes an impaired or insolvent insurer; and

(9) Require the board of directors to establish a policy and procedures for addressing conflicts of interests.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision (3), subsection (f), section eight and section nine of this article, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this
subsection shall take effect only with the approval of both the
board of directors and the commissioner, and may be made
only to a corporation, association or organization which
extends protection not substantially less favorable and
effective than that provided by this article.

§33-26A-18. Stay of court proceedings; reopening default
judgments.

1 All proceedings in which the impaired or insolvent
2 insurer is a party in any court in this state shall be stayed one
3 hundred eighty days from the date an order of liquidation,
4 rehabilitation or conservation is final to permit proper legal
5 action by the association on any matters germane to its
6 powers or duties. As to a judgment under any decision,
7 order, verdict or finding based on default the association may
8 apply to have the judgment set aside by the same court that
9 made the judgment and shall be permitted to defend against
10 the suit on the merits.

CHAPTER 140

(Com. Sub. for H.B. 2757 - By Delegates Perry, Shook, Ashley,
Schoen, Moore, Manchin, Miley, Skaff, Reynolds and Frazier)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]
§33-33-16, all relating to financial audits of insurers; defining terms; providing general requirements for filing annual audited financial reports; providing for creation of audit committee; requiring financial reports to include certain items; requiring the designation of an independent certified public accountant by insurers; providing requirements for the independent certified public accountants; prohibiting use of indemnification agreements by independent certified public accountants performing certain audits; permitting mediation or arbitration agreements in certain circumstances; requiring audit to be performed in accordance with generally accepted auditing standards; requiring independent certified public accountants to report adverse financial condition of insurers; requiring independent certified public accountants to report material weaknesses regarding internal control of insurers; requiring independent certified public accountants to provide letter of qualifications; requiring that workpapers of independent certified public accountants be available for review by Insurance Commissioner; providing for requirements of audit committee; requiring certain conduct of insurer regarding preparation of reports and documents; providing requirements for conducting financial audits of Canadian and British insurers; requiring report from insurers regarding internal control over financial reporting; providing exemptions; and providing effective dates of provisions.

Be it enacted by the Legislature of West Virginia:

That §33-33-1, §33-33-2, §33-33-3, §33-33-4, §33-33-5, §33-33-6, §33-33-8, §33-33-9, §33-33-10, §33-33-10a, §33-33-11, §33-33-12, §33-33-13, §33-33-14 and §33-33-15 of the Code of West Virginia, 1931, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-33-16, all to read as follows:

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.
§33-33-1. Declaration of policy and purpose.

(a) The purpose of this article is to improve the Insurance Commissioner’s surveillance of the financial condition of insurers by requiring:

(1) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;

(2) Communication of internal control related matters noted in an audit; and

(3) Management’s report of internal control over financial reporting.

(b) Every insurer, as defined in subdivision (7), section two of this article, shall be subject to this article. Insurers having direct premiums written in this state of less than $1 million in any calendar year and less than one thousand policyholders or certificate holders of directly written policies nationwide at the end of the calendar year shall be exempt from this article for the year, unless the commissioner makes a specific finding that compliance is necessary for the
commissioner to carry out statutory responsibilities. However, insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1 million or more will not be so exempt.

(c) Foreign or alien insurers filing audited financial reports in another state, pursuant to the other state’s requirement for filing of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from sections three through eleven of this article if:

(1) A copy of the audited financial report, communication of internal control-related matters noted in an audit, report on significant deficiencies in internal controls and the accountant’s letter of qualifications which are filed with the other state are filed with the commissioner in accordance with the filing dates specified in sections three, ten and ten-a of this article, respectively. Canadian insurers may submit accountants’ reports as filed with the Office of the Superintendent of Financial Institutions, Canada.

(2) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in section nine of this article.

(d) Foreign or alien insurers required to file Management’s Report of Internal Control over Financial Reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

(e) This article shall not prohibit or preclude or in any way limit the commissioner from performing examinations
of insurers as specified in section nine, article two of this chapter or any other examinations as the commissioner may be authorized by this chapter to perform.

§33-33-2. Definitions.

1 As used in this article:

2 (1) “Accountant” or “independent certified public accountant” means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice; for Canadian and British companies, the terms mean a Canadian-chartered or British-chartered accountant.

3 (2) An “affiliate” of, or person “affiliated” with a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

4 (3) “Audit committee” means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this article at the election of the controlling person. If an audit committee is not designated by the insurer, the insurer’s entire board of directors shall constitute the audit committee.

5 (4) “Audited financial report” means and includes those items specified in section four of this article.

6 (5) “Indemnification” means an agreement of indemnity or a release from liability where the intent or effect is to shift
or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or other professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(6) “Independent board member” has the same meaning as described in subdivision (3), section twelve of this article.

(7) “Insurer” means any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

(8) “Group of insurers” means those licensed insurers included in the reporting requirements of article twenty-seven of this chapter, or a set of insurers as identified by management for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) “Internal control over financial reporting” means a process effected by an entity’s board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements. The process includes the requirements set forth in subdivisions (2) through (7), subsection (b), section four of this article and those policies and procedures that:

(A) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
(B) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(C) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

(10) “SEC” means the United States Securities and Exchange Commission.


(12) “Section 404 report” means management’s report on “internal control over financial reporting” as defined by the SEC and the related attestation report of the independent certified public accountant as described in subdivision (1) of this section.

(13) “SOX Compliant Entity” means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(A) The preapproval requirements of Section 201, Section 10A(i) of the Securities Exchange Act of 1934;

(B) The audit committee independence requirements of Section 301, Section 10A(m)(3) of the Securities Exchange Act of 1934; and

(C) The internal control over financial reporting requirements of Section 404, Item 308 of SEC Regulation S-K.
§33-33-3. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

(a) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ending December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety days advance notice to the insurer.

(b) Extensions of the filing date on June 1 may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting the extension and determination by the commissioner of good cause for an extension. A request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with the provisions in subsection (b) of this section, a similar extension of thirty days is granted to the filing of management’s report of internal control over financial reporting.

(d) Every insurer required to file an annual audited financial report pursuant to this article shall designate a group of individuals as constituting its audit committee, as defined in subdivision (3), section two of this article. The audit committee of an entity that controls an insurer may be deemed to be the insurer’s audit committee for purposes of this article at the election of the controlling person.

(a) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Insurance Commissioner of the state of domicile.

(b) The annual audited financial report shall include the following:

1. Report of independent certified public accountant;
2. Balance sheet reporting admitted assets, liabilities, capital and surplus;
3. Statement of operations;
4. Statement of cash flow;
5. Statement of changes in capital and surplus;
6. Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners annual statement instructions and accounting practices and procedures manual, as amended, including reconciliation differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to section fourteen, article four of this chapter, with a written description of the nature of these differences; and
7. The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be
comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

§33-33-5. Designation of independent certified public accountant.

(a) Each insurer required by this article to file an annual audited financial report must, within sixty days after becoming subject to the requirements, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this article. Insurers not retaining an independent certified public accountant on the effective date of this article shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of this code and legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of his or her conformity to the statutory accounting practices prescribed or otherwise permitted by the Insurance Commissioner specifying any exceptions as he or she may believe appropriate.

(c) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the commissioner of this event. The insurer shall
also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding the notification there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant’s satisfaction and those not resolved to the former accountant’s satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish it in a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer’s letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

§33-33-6. Qualifications of independent certified public accountants.

(a) The commissioner may not recognize any person or firm as a qualified independent certified public accountant for purposes of performing the annual audited financial report if the person or firm:

(1) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
(2) Has either directly or indirectly entered into an agreement of indemnification or release from liability with respect to an audit of the insurer.

(b) Except as otherwise provided herein, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the West Virginia Board of Accountancy, or similar code.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. In the event a delinquency proceeding is commenced against the insurer under article ten of this chapter, the mediation or arbitration provisions shall operate at the option of the receiver.

(d) (1) The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. Following a period of service, the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

(A) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(B) Premium volume of the insurer; or
(C) Number of jurisdictions in which the insurer transacts business.

(2) The insurer shall file, with its annual statement filing, the approval for relief from subdivision (1) of this subsection with the states that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format.

(e) The commissioner may not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared, in whole or in part, by any natural person who:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this article; or

(3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this article.

(f) The commissioner may hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report made pursuant to this article and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this article.
(g) (1) The commissioner may not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared, in whole or in part, by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

(A) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

(B) Financial information systems design and implementation;

(C) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(D) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer’s financial statements. An accountant’s actuary may also issue an actuarial opinion or certification on an insurer’s reserves if the following conditions have been met:

(i) Neither the accountant nor the accountant’s actuary has performed any management functions or made any management decisions;

(ii) The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

(iii) The accountant’s actuary tests the reasonableness of the reserves after the insurer’s management has determined the amount of the reserves;
(E) Internal audit outsourcing services;

(F) Management functions or human resources;

(G) Broker or dealer, investment adviser, or investment banking services;

(H) Legal services or expert services unrelated to the audit; or

(I) Any other services that the commissioner determines, by legislative rule, are impermissible.

(2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant’s independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

(h) Insurers having direct written and assumed premiums of less than $1 million in any calendar year may request an exemption from subdivision (1), subsection (g) of this section. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with subdivision (1), subsection (g) of this section would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(i) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subdivision (1), subsection (g) of this section or that do not
conflict with subdivision (2), subsection (g) of this section, only if the activity is approved in advance by the audit committee, in accordance with subsection (j) of this section.

(j) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

(1) The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

(2) The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

(3) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(k) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (j) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(l) The commissioner may not recognize an independent certified public accountant as qualified for a particular insurer
if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(2) The insurer shall file, with its annual statement filing, the approval for relief from subdivision (1) of this subsection with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

§33-33-8. Scope of audit and report of independent certified public accountant.

Financial statements furnished pursuant to section four of this article shall be examined by the independent certified public accountant. The audit of the insurer’s financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the professional standards of the American Institute of Certified Public Accountants, “Consideration of Internal Control in a Financial Statement Audit” or its replacement, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a management’s report of internal control over financial reporting pursuant to section fifteen of this article, the independent certified public accountant should consider,
as that term is defined in Statement on Auditing Standards No. 102, "Defining Professional Requirements in Statements on Auditing Standards" or its replacement, the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.


(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirements of this chapter as of that date. An insurer that has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish to the commissioner a copy of his or her report within the next five business days.

(b) No independent public accountant shall be liable in any manner to any person for any statement made in connection with subsection (a) of this section if the statement is made in good faith in compliance with said subsection.
(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this article, becomes aware of facts which might have affected the report, the commissioner notes the obligation of the accountant to take action as prescribed in volume 1, section AU 561 of the professional standards of the American Institute of Certified Public Accountants.

§33-33-10. Communication of internal control related matters noted in an audit.

(a) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted by the accountant during the audit. Such communication shall be prepared by the accountant within sixty days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness, as the term material weakness is defined by Statement on Auditing Standards (SAS) No. 60, “Communication of Internal Control Related Matters Noted in an Audit” or its replacement, as of December 31 immediately preceding, so as to coincide with the audited financial report discussed in subsection (a), section three of this article, in the insurer’s internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(b) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant’s communication.

§33-33-10a. Accountant’s letter of qualifications.
The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the code of professional ethics and pronouncements of the American Institute of Certified Public Accountants and the rules of professional conduct of the West Virginia Board of Accountancy, or similar code;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this article shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this article and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of section eleven of this article and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner’s designee or appointed agent, the workpapers, as defined in section eleven of this article;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and
32 (6) A representation that the accountant is in compliance
33 with the requirements of section six of this article.

§33-33-11. Definition, availability and maintenance of
independent certified public accountant
workpapers.

(a) Workpapers are the records kept by the independent
certified public accountant of the procedures followed, the
tests performed, the information obtained, and the
conclusions reached pertinent to the accountant’s audit of the
financial statements of an insurer. Workpapers may include
audit planning documentation, work programs, analyses,
memoranda, letters of confirmation and representation,
abstracts of company documents and schedules or
commentaries prepared or obtained by the independent
certified public accountant in the course of his or her audit of
the financial statements of an insurer and which support the
accountant’s opinion.

(b) Every insurer required to file an audited financial
report pursuant to this article shall require the accountant to
make available for review by the commissioner all
workpapers prepared in the conduct of the accountant’s audit
and any communications related to the audit between the
accountant and the insurer, at the offices of the insurer, at the
insurance department or at any other reasonable place
designated by the commissioner. The insurer shall require
that the accountant retain the audit workpapers and
communications until the commissioner has filed a report of
examination, as required by section nine, article two of this
chapter, covering the period of the audit but no longer than
seven years from the date of the audit report.

(c) In the conduct of the aforementioned periodic review
by the commissioner, it shall be agreed that copies of
pertinent audit workpapers may be made and retained by the
commissions. Reviews by the commissioner shall be considered investigations and all workpapers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the commissioner.

§33-33-12. Requirements for audit committees.

This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this article. Each accountant shall report directly to the audit committee.

(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subdivision (3), section two of this article and subdivision (5) of this section.

(3) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in
the audit committee and be designated as independent for
audit committee purposes, unless they are an officer or
employee of the insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be
independent for reasons outside the member's reasonable
control, that person, with notice by the responsible entity to
the state, may remain an audit committee member of the
responsible entity until the earlier of the next annual meeting
of the responsible entity or one year from the occurrence of
the event that caused the member to be no longer
independent.

(5) To exercise the election of the controlling person to
designate the audit committee for purposes of this article, the
ultimate controlling person shall provide written notice to the
commissioners of the affected insurers. Notification shall be
made timely prior to the issuance of the statutory audit report
and include a description of the basis for the election. The
election can be changed through notice to the commissioner
by the insurer, which shall include a description of the basis
for the change. The election shall remain in effect for
perpetuity, until rescinded.

(6)(A) The audit committee shall require the
accountant that performs for an insurer any audit
required by this article to timely report to the audit
committee in accordance with the requirements of
Statement of Auditing Standards (SAS) No. 61,
"Communication with Audit Committees" or its
replacement, including:

(i) All significant accounting policies and material
permitted practices;

(ii) All material alternative treatments of financial
information within statutory accounting principles that have
been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(iii) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(B) If an insurer is a member of an insurance holding company system, the reports required by paragraph (A) of this subdivision may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(7) The proportion of independent audit committee members shall meet or exceed the following criteria:

<table>
<thead>
<tr>
<th>Prior Calendar Year Direct Written and Assumed Premiums</th>
<th>Over $300,000,000-$500,000,000</th>
<th>Over $500,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>No minimum requirements.</td>
<td>Majority (50% or more) of members shall be independent.</td>
<td>Supermajority of members (75% or more) shall be independent.</td>
</tr>
</tbody>
</table>

(A) The commissioner has authority afforded by state law to require the entity’s board to enact improvements to the independence of the audit committee membership if the insurer is in a risk based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

(B) All insurers with less than $500 million in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.
(C) Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(8) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program for less than $500 million, may make application to the commissioner for a waiver from this section’s requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

§33-33-13. Conduct of insurer in connection with the preparation of required reports and documents.

(a) No director or officer of an insurer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this article; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this article.
(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this article if that person knew or should have known that the action, if successful, could result in rendering the insurer’s financial statements materially misleading.

(c) For purposes of subsection (b) of this section, actions that, “if successful, could result in rendering the insurer’s financial statements materially misleading” include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

1. To issue or reissue a report on an insurer’s financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;

2. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

3. Not to withdraw an issued report; or

4. Not to communicate matters to an insurer’s audit committee.

§33-33-14. Canadian and British companies.

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by the companies with their supervision authority duly audited by an independent chartered accountant.
(b) For Canadian and British insurers, the letter required in subsection (b), section five of this article shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to section three of this article and shall affirm that the opinion expressed is in conformity with those requirements.

§33-33-15. Management’s report of internal control over financial reporting.

(a) Every insurer required to file an audited financial report pursuant to this article that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $500 million, or more, shall prepare a report of the insurer’s or group of insurers’ internal control over financial reporting, as these terms are defined in section two of this article. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under section ten of this article. Management’s report of internal control over financial reporting shall be filed as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in subsection (a) of this section, the commissioner may require an insurer to file management’s report of internal control over financial reporting if the insurer is in any risk-based capital level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in article ten of this chapter.

(c) An insurer or a group of insurers may file its or its parent’s Section 404 Report and an addendum in satisfaction of this section’s requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer’s or group of
insurers’ audited statutory financial statements were included in the scope of the Section 404 Report and if the insurer or group of insurers is:

(1) Directly subject to Section 404;

(2) Part of a holding company system whose parent is directly subject to Section 404;

(3) Not directly subject to Section 404 but is a SOX Compliant Entity; or

(4) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity.

(d) The addendum referenced in subsection (c) of this section shall be a positive statement by management that there is no material process with respect to the preparation of the insurer’s or group of insurers’ audited statutory financial statements excluded from the Section 404 Report.

(e) If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer’s or group of insurers’ audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file:

(1) A report pursuant to subsection (a) of this section; or

(2) The Section 404 Report and a [Section 16] report pursuant to subsection (a) of this section for those internal controls that have a material impact on the preparation of the insurer’s or group of insurers’ audited statutory financial statements not covered by the Section 404 Report.
(f) Management’s report of internal control over financial reporting shall include:

(1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(2) A statement that management has established internal control over financial reporting and an assertion, to the best of management’s knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of the December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(6) A statement regarding the inherent limitations of internal control systems; and

(7) Signatures of the chief executive officer and the chief financial officer, or the equivalent position or title.
(g) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (f) of this section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

2. Management’s report on internal control over financial reporting, required by subsection (a) of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the commissioner.

§33-33-16. Exemptions and effective dates.

(a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this article if the commissioner finds, upon review of the application, that compliance with this article would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer’s written request for an exemption from this article, the insurer may request in writing a hearing on its application for an exemption.

(b) Unless otherwise provided in this section, the provisions of this article shall become effective on January 1, 2010.
(c) Domestic insurers retaining a certified public accountant on the effective date of this article who qualify as independent shall comply with this article for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.

(d) Domestic insurers not retaining a certified public accountant on the effective date of this article who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise:

(1) As of December 31, 2010, file with the commissioner an audited financial report; and

(2) For the year ending December 31, 2010, and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this article.

(e) Foreign insurers shall comply with this article for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.

(f) The requirements of subsection (d), section six of this article shall be in effect for audits of the year beginning January 1, 2010, and each year thereafter.

(g) The requirements of section twelve of this article are to be in effect January 1, 2010, and each year thereafter. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold exceeded to comply with the independence requirements. An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date
of acquisition or combination to comply with the independence requirements.

(h) The requirements of section fifteen of this article are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded to file a report. An insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

CHAPTER 141

(Com. Sub. for S.B. 408 - By Senators Minard, Jenkins, Stollings and Kessler)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to repeal §33-48-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-48-7b; and to amend and reenact §33-48-8 of said code, all relating to the model health plan for uninsurable individuals; removing obsolete sunset provision; authorizing the use of surplus funds in the plan fund to subsidize premiums of certain enrollees; and permitting the board to propose legislative rules to propose additional classes of individuals to which the preexisting condition exclusion may not apply.
Be it enacted by the Legislature of West Virginia:

That §33-48-11 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-48-7b; and that §33-48-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

§33-48-7b. Surplus available to subsidize premiums.


§33-48-7b. Surplus available to subsidize premiums.

1 Whenever the board determines that the account created pursuant to section seven-a of this article contains a surplus above those amounts necessary to provide fully for the expected costs of claims and other expenses listed in subsection (a), section seven of this article, the plan may use such surpluses to subsidize the premium of certain low income enrollees whose eligibility shall be established by legislative rule. 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 criteria for enrollees with low income eligible for premium subsidy pursuant to this section.


(a) The plan shall offer health care coverage consistent with comprehensive coverage to every eligible person who is not eligible for medicare. The coverage to be issued by the plan, its schedule of benefits, exclusions and other limitations shall be established by the board and subject to the approval of the commissioner.

(b) In establishing the plan coverage, the board shall take into consideration the levels of health insurance coverage
provided in the state and medical economic factors as may be
deemed appropriate; and promulgate benefit levels,
deductibles, coinsurance factors, exclusions and limitations
determined to be generally reflective of and commensurate
with health insurance coverage provided through a
representative number of large employers in the state.

(c) The board may adjust any deductibles and
coinsurance factors annually according to the medical
component of the consumer price index.

(d) Preexisting conditions. --

(1) Plan coverage shall exclude charges or expenses
incurred during the first six months following the effective
date of coverage as to any condition for which medical
advice, care or treatment was recommended or received as to
such conditions during the six-month period immediately
preceding the effective date of coverage, except that no
preexisting condition exclusion shall be applied to a federally
defined eligible individual. The board may propose rules for
legislative approval in accordance with the provisions of
article three, chapter twenty-nine-a of this code to propose
any other additional class of eligible individuals to which the
preexisting condition exclusion may not apply.

(2) Subject to subdivision (1) of this subsection, the
preexisting condition exclusions shall be waived to the extent
that similar exclusions, if any, have been satisfied under any
prior health insurance coverage which was involuntarily
terminated: Provided, That:

(A) Application for pool coverage is made not later than
sixty-three days following such involuntary termination and,
in such case, coverage in the plan shall be effective from the
date on which such prior coverage was terminated; and

(B) The applicant is not eligible for continuation or
conversion rights that would provide coverage substantially
similar to plan coverage.
(e) **Nonduplication of benefits.**

1. The plan shall be payer of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under plan coverage shall be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment or liability insurance, whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

2. The plan shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this subdivision.

**CHAPTER 142**

(Com. Sub. for H.B. 3076 - By Delegates Martin, Walker, Butcher, D. Poling, M. Poling, Boggs, Perry, Caputo, Hamilton and Ellem)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-7 of the Code of West Virginia, 1931, as amended, all relating to the regulation and operation of cranes; providing new definition for tower crane; establishing
certification renewal requirements for crane operators; providing for automatic certification of certain crane operators; and creating a penalty for operation of tower cranes without certification.

Be it enacted by the Legislature of West Virginia:

That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.

For purposes of this article:

(a) "Commissioner" means the Commissioner of the Division of Labor, or his or her authorized representative.

(b) "Crane" means a power-operated hoisting machine used in construction, demolition or excavation work, which has a power-operated winch and load line and a power-operated boom that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer’s rated lifting capacity of five tons or more. "Crane" does not mean a forklift, digger derrick truck, bucket truck or any vehicle, aircraft or helicopter, or equipment which does not have a power-operated winch and load line.

(c) "Emergency basis" means an occurrence of an event, circumstance or situation that presents an imminent threat to persons or property and constitutes a serious health or safety hazard.
(d) "Employer" means any person, firm, corporation or other entity who hires or permits any individual to work.

(e) "Employee" means any individual employed by an employer and also as defined by the commissioner.

(f) "Tower crane" means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

(g) "Training or training course" means a course approved by the commissioner which includes some form of testing throughout, or a final written examination or practical test, or both, which ensures, or tends to ensure that learning has occurred and that the objectives of the training have been realized. The commissioner will evaluate whether the approved training adequately demonstrates competency to safely operate cranes.

§21-3D-2. Certification required; exemptions.

(a) A person may not operate a crane or tower crane without certification issued under this article except for those persons exempted under subsection (b) of this section.

(b) A person is not required to obtain certification under this article if the person:

(1) Is a member of the Armed Forces of the United States or an employee of the United States, when such member or employee is engaged in the work of a crane operator exclusively for such governmental unit; or

(2) Is primarily an operator of farm machinery who is performing the work of a crane operator as part of an agricultural operation; or

(3) Is operating a crane on an emergency basis; or
(4) Is operating a crane for personal use and not for profit on the site of real property which the person owns or leases; or

(5) Is under the direct supervision of a certified crane operator and:

(A) Who is enrolled in an industry recognized in-house training course based on the American National Standards Institute Standards for Crane Operators and who is employed by the entity that either taught the training course or contracted to have the training course taught, all of which is approved by the commissioner; or

(B) Who is enrolled in an apprenticeship program or training program for crane operators approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

(6) Is an employee of and operating a crane at the direction of any manufacturing plant or other industrial establishment, including any mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery or well or is an employee of and operating a crane at the direction of the person, firm or corporation who owns or is operating such plant or establishment;

(7) Is an employee of a public utility operating a crane to perform work in connection with facilities used to provide a public service under the jurisdiction of the Public Service Commission, Federal Energy Regulatory Commission or Federal Communications Commission; or

(8) Is operating timbering harvesting machinery associated with the production of timber and the manufacturing of wood products.

1 The commissioner shall:

2 (a) Propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code, which rules at the minimum must include
5 provisions for:

6 (1) Certification of individuals who operate cranes or
tower cranes in the State of West Virginia, which
certification process must include a written examination and
a practical demonstration, and must utilize standards no less
restrictive than those prescribed by the American society of
mechanical engineers/American National Standards Institute
Safety Code and personnel certification accreditation
standards; as of the effective date of this article: Provided,
That the rule governing the practical examination must be a
separate rule and provide for the implementation of the
practical examination on or before July 1, 2001: Provided,
however, That the successful completion of a training course
approved by the commissioner may be substituted for the
written examination and for the practical demonstration as set
forth in section four of this article.

21 (2) Certification categories including lattice boom truck
cranes; lattice boom crawler cranes; fixed cab-telescoping
boom cranes; swing cab-telescoping boom cranes; and tower
cranes: Provided, That the holders of a certification for the
large telescoping boom crane, upon application for
recertification, will be provided with a one time election to
either be certified as an operator of a fixed-cab or swing-cab
telelescoping boom crane, and that holders of a certification for
the small telescoping boom crane, upon application for
recertification, will be automatically certified as a fixed cab
operator.
(3) Certification renewal requirements of individuals who operate cranes in the State of West Virginia, that may not be more restrictive than those prescribed for the individual’s initial certification, but must include a written examination and a current physician’s certificate at least every five years: Provided, That the successful completion of a training course approved by the commissioner may be substituted for the written examination.

(b) Prescribe application forms for original and renewal certification.

(c) Set application fees in amounts that are reasonable and necessary to defray the costs of the administration of this article in an amount not to exceed $75 per year.

(d) Set examination and training course fees in an amount not to exceed the actual cost of the examination and the training course.

(e) Administer or cause to be administered the written examination, practical demonstrations and the training course as required for certification.

(f) Determine the standards for acceptable performance on the written examination, practical demonstration and the required training course: Provided, That the minimum standards must be consistent with national standards, current operating procedures and technology and be transferable to other states where possible: Provided, however, That the commissioner shall develop standards and criteria to establish a dual classification system of certification and implement this dual system of certification no later than January 1, 2001.

(g) Provide the option for applicants and crane operators to take examinations that meet or exceed requirements for national crane operator certification.
§21-3D-4. Minimum certification requirements.

(a) The commissioner shall certify an applicant who:

1. Is at least eighteen years of age;

2. Meets the application requirements as prescribed by rule;

3. Passes the written examination: Provided, That any person who documents at least two thousand hours of on-the-job experience operating a crane during the four years immediately preceding filing for application, or successfully completes a training course approved by the commissioner, and applies for certification no later than September 1, 2001, and meets all other requirements and pays all applicable fees, is entitled to certification without a written examination;

4. Passes the practical demonstration: Provided, That the practical demonstration approved by the commissioner may be administered on-site by a qualified company representative: Provided, however, That any person who documents at least two thousand hours of on-the-job experience operating a crane during the preceding four years next prior to filing for application or the successful completion of a training course approved by the commissioner is entitled to certification without a practical demonstration under this article if the person applies for certification no later than September 1, 2001, meets all other requirements and pays applicable application and examination fees;

5. Presents the original, or a photographic copy, of a physician’s certificate that he or she is physically qualified to drive a commercial motor vehicle as required by 49 C.F.R.
§391.41, as of the effective date of this article or an equivalent physician’s certificate as approved by the commissioner; and

(6) Pays the appropriate fees.

(b) Certification issued under this article is valid throughout the state and is not assignable or transferable, and is valid for one year from the date on which it was issued.

(c) Notwithstanding any other provision of this section, the Division of Labor may issue a temporary certification, to expire on January 1, 2001, to an applicant who: (1) Documents at least two thousand hours of on-the-job experience during the preceding four years; (2) submits scores for the written examination; and (3) provides proof of attendance at an approved crane safety training course, in an application for certification filed not later than July 1, 2000.

(d) Notwithstanding any other provision of this article to the contrary, the commissioner shall establish a dual classification system of certification no later than January 1, 2001. One classification will provide eligibility for national certification, and the applicant must achieve a passing score of seventy on the national commission for the certification of crane operators written examination. To be classified for West Virginia certification, the commissioner may accept a lesser score on the national commission for the certification of crane operators written examination: Provided, That this score may not be less than sixty for state certification: Provided, however, That the successful completion of a training course approved by the commissioner may be substituted for the written examination and for the practical demonstration if the applicant applies for certification no later than September 1, 2001. The commissioner shall propose a legislative rule as to the dual classification system no later than July 1, 2000.
§21-3D-7. Penalties.

1 (a) A person required to obtain certification under this article, who operates a crane or tower crane without certification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 for each violation.

6 (b) No person may knowingly or intentionally drive or operate a crane or tower crane while:

8 (1) Having any measurable alcohol in his or her system; or

10 (2) Under the influence of any controlled substance, as defined by subdivision (d), section one hundred one, article one, chapter sixty-a of this code; or

13 (3) Under the combined influence of alcohol and any controlled substance or any other drug.

A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000. In addition to the fine, the Commissioner of Labor shall revoke the person’s certification for not less than one year.

(c) An employer who knowingly employs, permits or directs a person to operate a crane or tower crane without proper certification is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 for each violation.

(d) A person, operating a crane or tower crane, who fails to produce the certification within twenty-four hours after request of the commissioner or his or her authorized representative, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than $50 nor more
than $100.

(e) If a person is convicted for an offense described in
this section, and does not act to appeal the conviction within
the time periods as hereinafter described, then the person’s
certification may be revoked or suspended in accordance with
the provisions of this article, and, further:

(1) The clerk of the court in which a person is convicted
for an offense described in this section shall forward to the
commissioner a transcript of the judgment of conviction. If
the conviction is the judgment of a magistrate court, the
magistrate court clerk shall forward the transcript when the
person convicted has not requested an appeal within twenty
days of the sentencing for such conviction. If the conviction
is the judgment of a circuit court, the circuit clerk shall
forward the transcript when the person convicted has not
filed a notice of intent to file a petition for appeal or writ of
error within thirty days after the judgment was entered; and

(2) If, upon examination of the transcript of the judgment
of conviction, the commissioner shall determine that the
person was convicted for any of the offenses described in this
section, the commissioner shall make and enter an order
revoking or suspending the person’s certificate to operate a
crane or tower crane in this state. The order shall contain the
reasons for the revocation or suspension and the revocation
or suspension periods provided by this article or by rule.
Further, the order shall give the procedures for requesting a
hearing. The person shall be advised in the order that
because of the receipt of a transcript of the judgment of
conviction by the commissioner a presumption exists that the
person named in the transcript of the judgment of conviction
is the person named in the commissioner’s order and such
constitutes sufficient evidence to support revocation or
suspension and that the sole purpose for the hearing held
under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order; and

(3) The provisions of this subsection do not apply if an order reinstating the crane or tower crane operator’s certification of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction; and

(4) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.

CHAPTER 143

(Com. Sub. for S.B. 172 - By Senators Minard, Fanning, Prezioso, Unger, Boley and Facemyer)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact article 2, 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 rule
with various modifications presented to and recommended by
the Legislative Rule-Making Review Committee; authorizing
certain of the agencies to promulgate certain legislative rule
with various modifications presented to and recommended by
the Legislative Rule-Making Review Committee and as
amended by the Legislature; repealing certain legislative rule;
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
Retirement System; authorizing the Consolidated Public
Retirement Board to promulgate a legislative rule relating to
the Public Employees Retirement System; authorizing the
Consolidated Public Retirement Board to promulgate a
legislative rule relating to refund, reinstatement, retroactive
service and loan interest factors; authorizing the Consolidated
Public Retirement Board to promulgate a legislative rule relating to
service credit for accrued and unused sick and
annual leave; 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; authorizing the Division
of Personnel to promulgate a legislative rule relating to
reimbursement of compensation paid to state employees for
training, education and professional development; authorizing
the Department of Administration to promulgate a legislative
rule relating to the Purchasing Division; authorizing the
Department of Administration to promulgate a legislative rule
relating to fair market price determination; authorizing the
Department of Administration to promulgate a legislative rule relating to statewide contracts; authorizing the Department of Administration to promulgate a legislative rule relating to qualifications for participation; authorizing the Department of Administration to promulgate a legislative rule relating to parking; authorizing the Ethics Commission to promulgate a legislative rule relating to the purchase, sale or lease of personal property; authorizing the Ethics Commission to promulgate a legislative rule relating to interest in public contracts; authorizing the Ethics Commission to repeal a legislative rule relating to voting; authorizing the Ethics Commission to promulgate a legislative rule relating to employment exemptions; authorizing the Ethics Commission to promulgate a legislative rule relating to lobbying; and authorizing the Ethics Commission to promulgate a legislative rule relating to the filing of verified time records.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

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

§64-2-2. Division of Personnel.
§64-2-3. Department of Administration.


1 (a) The legislative rule filed in the State Register on
2 August 13, 2008, authorized under the authority of section
3 one, article ten-d, chapter five of this code, relating to the
4 Consolidated Public Retirement Board (general provisions,
5 162 CSR 1), is authorized.
(b) The legislative rule filed in the State Register on August 13, 2008, 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 September 3, 2008, relating to the Consolidated Public Retirement Board (benefit determination and appeal, 162 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on August 13, 2008, 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 September 3, 2008, relating to the Consolidated Public Retirement Board (Teachers’ Retirement System, 162 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on August 13, 2008, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR 5), is authorized.

(e) The legislative rule filed in the State Register on August 13, 2008, 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.

(f) The legislative rule filed in the State Register on the August 13, 2008, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (service credit for accrued and unused sick and annual leave, 162 CSR 8), is authorized.
(g) The legislative rule filed in the State Register on August 13, 2008, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (West Virginia State Police, 162 CSR 9), is authorized.

(h) The legislative rule filed in the State Register on August 13, 2008, 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 September 3, 2008, relating to the Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10), is authorized.

§64-2-2. Division of Personnel.

The legislative rule filed in the State Register on July 25, 2008, authorized under the authority of section two, article four, chapter six-c of this code, modified by the Division of Personnel to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 5, 2008, relating to the Division of Personnel (reimbursement of compensation paid to state employees for training, education and professional development, 143 CSR 8), is authorized.

§64-2-3. Department of Administration.

(a) The legislative rule filed in the State Register on August 12, 2008, authorized under the authority of section four, article three, chapter five-a of this code, relating to the Department of Administration (Purchasing Division, 148 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section five, article four, chapter five-a of this code, modified by the Department of Administration to meet the objections of the
10 Legislative Rule-Making Review Committee and refiled in
11 the State Register on November 20, 2008, relating to the
12 Department of Administration (parking, 148 CSR 6), is
13 authorized.

14 (c) The legislative rule filed in the State Register on
15 August 27, 2008, authorized under the authority of section
16 five, article three-a, chapter five-a of this code, modified by
17 the Department of Administration to meet the objections of
18 the Legislative Rule-Making Review Committee and refiled
19 in the State Register on December 12, 2008, relating to the
20 Department of Administration (fair market price
determination, 186 CSR 1), is authorized, with the following
21 amendment:

22 On page three, subsection 3.3.1, line twenty-one,
23 following the period after the words “receipt of request”, by
24 inserting the words “If the spending unit does not have copies
25 of the most recent solicitation and contract for the service or
26 commodity, the spending unit shall authorize the Purchasing
27 Division to release to the CNA that information, if available,
28 within ten (10) working days of receipt of request by the
29 CNA.”;

31 And,

32 On page seven, subsection 5.1.5, line twenty-two,
33 following the period after the words “receipt of the proposed
34 price”, by striking out the remainder of the sentence.

35 (d) The legislative rule filed in the State Register on
36 August 27, 2008, authorized under the authority of section
37 five, article three-a, chapter five-a of this code, modified by
38 the Department of Administration to meet the objections of
39 the Legislative Rule-Making Review Committee and refiled
40 in the State Register on December 12, 2008, relating to the
41 Department of Administration (statewide contracts, 186 CSR
42 3), is authorized.
(e) The legislative rule filed in the State Register on August 27, 2008, authorized under the authority of section five, article three-a, 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 December 12, 2008, relating to the Department of Administration (qualifications for participation, 186 CSR 4), is authorized.


(a) The legislative rule filed in the State Register on August 21, 2008, authorized under the authority of section five, 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 November 26, 2008, relating to the Ethics Commission (purchase, sale or lease of personal property, 158 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on August 21, 2008, 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 November 26, 2008, relating to the Ethics Commission (interest in public contracts, 158 CSR 8), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2008, authorized under the authority of section two, article two, chapter six-b of this code, relating to the Ethics Commission (voting, 158 CSR 9), is authorized.

(d) The legislative rule filed in the State Register on August 21, 2008, authorized under the authority of section five, article two, chapter six-b of this code, modified by the Ethics Commission to meet the objections of the Legislative
25 Rule-Making Review Committee and refiled in the State Register on November 26, 2008, relating to the Ethics Commission (employment exemptions, 158 CSR 11), is authorized.

29 (e) The legislative rule filed in the State Register on July 28, 2008, 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 September 5, 2008, relating to the Ethics Commission (lobbying, 158 CSR 12), is authorized.

36 (f) The legislative rule filed in the State Register on August 21, 2008, authorized under the authority of section two, article two, chapter six-b of this code, relating to the Ethics Commission (filing of verified time records, 158 CSR 14), is authorized.

---

CHAPTER 144

(Com. Sub. for S.B. 153 - By Senators Minard, Fanning, Prezioso, Unger, Boley and Facemyer)

[Passed April 8, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

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 rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management systems; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the assessment of civil administrative penalties; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management fee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the control and reduction of nitrogen oxides from nonelectric-generating units as a means of mitigate transport of ozone precursors; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule
relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the Nox budget trading program as a means of control and reduction of nitrogen oxides from electric-generating units; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to a mercury budget training program to reduce mercury emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rules for coal mining facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the State Water Pollution Control Revolving Fund; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to environmental laboratories’ certification and standards of performance; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to dam safety; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the assessment of civil administrative penalties; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment.

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

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

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.**

§64-3-1. Department of Environmental Protection.
(a) The legislative rule filed in the State Register on August 28, 2008, 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.

(b) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the legislative rule-making review committee and refiled in the State Register on October 24, 2008, relating to the Department of Environmental Protection (hazardous waste management systems, 33 CSR 20), is authorized.

(c) The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section fifteen, 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 November 21, 2008, relating to the Department of Environmental Protection (assessment of civil administrative penalties, 33 CSR 22), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2008, authorized under the authority of section twenty-two, article eighteen, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the legislative rule-making review committee and refiled in the State Register on October 24, 2008, relating to the Department of Environmental Protection (hazardous waste management fee, 33 CSR 24), is authorized.
(e) The legislative rule filed in the State Register on August 29, 2008, 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 February 17, 2009, relating to the Department of Environmental Protection (surface mining reclamation, 38 CSR 2), is authorized.

(f) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control and reduction of nitrogen oxides from nonelectric-generating units as a means of mitigate transport of ozone precursors, 45 CSR 1), is authorized.

(g) The legislative rule filed in the State Register on August 29, 2008, 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 November 21, 2008, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 8), is authorized.

(h) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation, 45 CSR 13), is authorized.

(i) The legislative rule filed in the State Register on August 29, 2008, 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 January 16, 2009, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration, 45 CSR 14), is authorized.

(j) The legislative rule filed in the State Register on August 29, 2008, 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.

(k) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Nox budget trading program as a means of control and reduction of nitrogen oxides from electric-generating units, 45 CSR 26), is authorized.

(l) The legislative rule filed in the State Register on August 29, 2008, 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.

(m) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (mercury budget training program to reduce mercury emissions, 45 CSR 37), is authorized.
(n) The legislative rule filed in the State Register on August 28, 2008, 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 February 17, 2009, relating to the Department of Environmental Protection (WV/NPDES rules for coal mining facilities, 47 CSR 30), is authorized.

(o) The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section three, article two, chapter twenty-two-c of this code, relating to the Department of Environmental Protection (state water pollution control revolving fund, 47 CSR 31), is authorized.

(p) The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section fifteen, article one, 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 December 12, 2008, relating to the Department of Environmental Protection (environmental laboratories certification and standards of performance, 47 CSR 32), is authorized.

(q) The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the legislative rule-making review committee and refiled in the State Register on January 22, 2009, relating to the Department of Environmental Protection (dam safety, 47 CSR 34), is authorized.
(r) The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section ten, article twelve, 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 November 21, 2008, relating to the Department of Environmental Protection (assessment of civil administrative penalties, 47 CSR 56), is authorized.

(s) The legislative rule filed in the State Register on August 25, 2008, 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 redevelopment, 60 CSR 3), is authorized.

CHAPTER 145

(Com. Sub. for H.B. 2225 - By Delegates Brown, D. Poling, Talbott, Miley, Overington and Sobonya)

[Passed April 7, 2009; in effect from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact article 4, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Education and the Arts and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative
Ch. 145]  LEGISLATIVE RULES  1215

agencies of the Department of Education and the Arts; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-making Review Committee; authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to low vision driver training program.

Be it enacted by the Legislature of West Virginia:

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

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

§64-4-1. Division of Rehabilitation Services.

1 The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section ten, article two-b, chapter seventeen-b, of this code, modified by the Division of Rehabilitation Services to meet the objections of the legislative rule-making review committee and refiled in the State Register on January 21, 2009, relating to the Division of Rehabilitation Services (low vision driver training program, 130 CSR 3 ), is authorized.
AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the 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 rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; 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 public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to licensure of medical adult day care centers; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to tuberculosis testing, control treatment and commitment; authorizing the Commission for the Deaf and Hard of Hearing to promulgate
a legislative rule relating to the establishment of required qualifications and ethical standards for interpreters and transliterators; and authorizing the Division of Human Services to promulgate a legislative rule relating to child care center licensing.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) The legislative rule filed in the State Register on August 28, 2008, 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 October 27, 2008, relating to the Department of Health and Human Resources (public water systems, 64 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on August 27, 2008, authorized under the authority of section eight, article five-b, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2008, relating to the Department of Health and Human
Resources (licensure of medical adult day care centers, 64 CSR 2), is authorized with the following amendments:

On page five, section three, by inserting a new subsection, designated 3.39, to read as follows:

3.39. Substantial compliance. The Medical Adult Day Care Center has no violation of which, as the secretary determines, would present an imminent danger to the health, safety or welfare of any resident or a probability that death or serious physical harm could result, and has no ongoing violation of a regulation where there is a direct or immediate relationship to the health, safety or welfare of the resident(s);

And renumbering the remaining subsections;

On page twenty-three, section eight, by striking out all of 8.4.a and inserting in lieu thereof a new 8.4.a, to read as follows:

8.4.a. The licensee shall ensure that all participant care and treatment is provided by appropriate individuals as required by state and federal law;

And,

On page thirty, section fourteen, by striking out all of subsection 14.1 and inserting in lieu thereof a new subsection 14.1, to read as follows:

14.1. The Secretary may suspend or revoke a medical adult day care center license according to the provision of Chapter 16, Article 5B, Section 6 of the West Virginia Code.

(c) The legislative rule filed in the State Register on August 28, 2008, authorized under the authority of section
nine, article three-d, chapter sixteen of this code, modified by
the Department of Health and Human Resources to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on October 27,
2008, relating to the Department of Health and Human
Resources (tuberculosis testing, control treatment and
commitment, 64 CSR 76), is authorized.


The legislative rule filed in the State Register on August
27, 2008, authorized under the authority of section five,
article fourteen, chapter five of this code, modified by the
Commission for the Deaf and Hard of Hearing to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on October 21,
2008, relating to the Commission for the Deaf and Hard of
Hearing (establishment of required qualifications and ethical
standards for interpreters and transliterators, 192 CSR 3), is
authorized.

§64-5-3. Division of Human Services.

The legislative rule filed in the State Register on August
26, 2008, authorized under the authority of section four,
article two-b, chapter forty-nine of this code, modified by the
Division of Human Services to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on November 21, 2008, relating to the
Division of Human Services (child care center licensing, 78
CSR 1), is authorized.
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 Regional Jail and Correctional Facility Authority to promulgate a legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the Authority; authorizing the Fire Commission to promulgate a legislative rule relating to the standards for the
certification and continuing education of municipal, county and other public building code officials, building code inspectors and plans examiners; and authorizing the State Fire Marshal to promulgate a legislative rule relating to the supervision of fire protection work.

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. Regional Jail and Correctional Facility Authority.

The legislative rule filed in the state register on the eighteenth day of January, two thousand eight, authorized under the authority of section ten, article twenty, chapter thirty-one, of this code, modified by the Regional Jail and Correctional Facility Authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, two thousand nine, relating to the Regional Jail and Correctional Facility Authority (criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority, 94 CSR 7), is authorized, with the following amendments:

On page 1, subsection 2.2, by deleting the last sentence and inserting in lieu thereof the following:

“In calculating the schedule, the Authority may include moneys for an operational reserve fund: Provided, That
moneys budgeted for the operational reserve fund may not exceed the amount of actual operational expenditures incurred during a three month period in the preceding fiscal year: Provided, however, That such three month period must be the three month period with the lowest operational expenditures for any three month period in the preceding fiscal year.

§64-6-2. Fire Commission.

The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section five, article three, chapter twenty-nine, of this code, modified by the Fire Commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, two thousand nine, relating to the Fire Commission (standards for the certification and continuing education of municipal, county and other public building code officials, building code inspectors and plans examiners, 87 CSR 7), is authorized, with the following amendments:

On page 2, by striking subdivision 3.2.a in its entirety and inserting in lieu thereof the following:

“3.2.a. Building Code Official. - To be certified as a ‘Building Code Official’ a person must:

(1) Complete the following courses:

(A) 01 CBO Legal & Management and 02 CBO Technology; or

(B) 01 CBO Legal & Management and B1 Residential Building Inspector, B2 Commercial Building Inspector, M1 Residential Mechanical Inspector, E1 Residential Electrical Inspector, E2 Commercial Electrical Inspector, P1
24 Residential Plumbing Inspector and P2 Commercial Plumbing Inspector; or

26 (2) Be certified as a Certified Building Code Official (CBCO) by successfully completing the following examinations: B1 Residential Building Inspector; B2 Commercial Building Inspector; B3 Residential Plans Examiner; 01 Legal and Management; and 02 CBO Technology; or

32 (3) Complete an equivalent certification by an examination authority accepted by the State Fire Commission; or

35 (4) Be licensed by the State of West Virginia as a Professional Engineer or Professional Architect.”;

37 On page 4, subsection 6.1., by striking, “government body” and inserting in lieu thereof the words, “government entity”;

40 And,

41 On page 4, subsection 6.3., by striking the words, “government body” and inserting in lieu thereof the word, “government entity”.

§64-6-3. State Fire Marshal.

1 The legislative rule filed in the state register on the sixth day of August, two thousand eight, 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 eighteenth day of February, two thousand nine, relating to the State Fire Marshal (supervision of fire protection work, 103 CSR 3), is authorized.
CHAPTER 148

(Com. Sub. for S.B. 227 - By Senators Minard, Fanning, Prezioso, Unger, Boley and Facemyer)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 11, 2009.]

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; 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 State Tax Department to repeal a legislative rule relating to valuation of intangible personal property including stock accounts receivable and stock in banks and capital of savings and loan associations; authorizing the State Tax Department to promulgate a legislative rule relating to combined returns pursuant to an investigation by the Tax Commissioner; authorizing the State Tax Department to promulgate a legislative rule relating to the film industry
investment tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to electronic filing and payment of special district excise tax; authorizing the State Tax Department to promulgate a legislative rule relating to the withholding or denial of personal income tax refunds from taxpayers who owe municipal costs, fines, forfeitures or penalties; disapproving the State Tax Department’s proposed legislative rule relating to an exchange of information agreement between the State Tax Division and the Department of Health and Human Resources Office of the Inspector General Medicaid Fraud Control Unit; authorizing the Insurance Commissioner to promulgate a legislative rule relating to coordination of health benefits; authorizing the Insurance Commissioner to promulgate a legislative rule relating to long-term care insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to actuarial opinion and memorandum; authorizing the Insurance Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the Insurance Commissioner to promulgate a legislative rule relating to viatical settlements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to discount medical plan organizations and discount prescription drug plan organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to professional employer organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; and authorizing the Lottery Commission to promulgate a legislative rule relating to limited video lottery.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:
ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.
§64-7-2. Insurance Commissioner.
§64-7-3. Racing Commission.
§64-7-4. Lottery Commission.

§64-7-1. State Tax Department.

(a) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section five, article ten, chapter eleven of this code, relating to the State Tax Department (Valuation of Intangible Personal Property Including Stock Accounts Receivable and Stock in Banks and Capital of Savings and Loan Associations, 110 CSR 1L), is authorized.

(b) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section seven-d, 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 January 12, 2009, relating to the State Tax Department (Combined Returns Pursuant to an Investigation by the Tax Commissioner, 110 CSR 10K), is authorized.

(c) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section nine, article thirteen-x, 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 January 12, 2009, relating to the State Tax Department (Film Industry Investment Tax Credit, 110 CSR 13X), is authorized with the following amendments:
On page five, paragraph 3.1.b.1. by striking out the words “Tax Commissioner” and inserting in lieu thereof the words “Film Office”;

On page five, paragraph 3.1.b.2. by striking out the words “this article” and inserting in lieu thereof “W.Va. Code, §11-13X-1 et seq”;

On page six, by striking out “4.1.d.” and inserting in lieu thereof “4.1.c.3.”;

On page six, by striking out all of subdivision 4.1.e. and inserting in lieu thereof a new subdivision, designated subdivision 4.1.d., to read as follow:

4.1.d. Upon approval of an eligibility application, the eligible company shall begin production within one hundred twenty (120) days of approval, or shall otherwise forfeit the right to claim any tax credit for the approved qualified project. The forfeiture does not preclude the eligible company from resubmitting an eligibility application for the same project at a future date. Upon written request by the eligible company, and prior to the expiration of the one hundred twenty (120) day deadline, the reviewing committee may extend the deadline at its discretion.

On page six, by striking out “4.2.c.1.” and inserting in lieu thereof “4.2.a.”;

On page six, by striking out “4.2.c.2.” and inserting in lieu thereof “4.2.b.”;

On page six, by striking out “4.2.c.3.” and inserting in lieu thereof “4.2.c.”;

On page six, by striking out “4.2.c.4.” and inserting in lieu thereof “4.2.d.”;
On page seven, by striking out “4.2.d” and inserting in lieu thereof “4.2.e.”;

On page nine, subsection 5.5, by striking out the words “be considered” and inserting in lieu thereof the words “maintain its initial position in the queue”;

On page nine, by striking out all of subdivisions 5.5.a. and 5.5.b.;

On page nine, by inserting two new subsections, designated subsections 5.6 and 5.7, to read as follows:

5.6. Requests for Increase in Tax Credit Allocation. – If an eligible company seeks an increase in the amount of tax credits for an approved qualified project, the eligible company shall submit an application for modification to the Film Office, which shall be submitted by and bear the same signature as the person who submitted the original eligibility application, or a duly authorized representative. The reviewing committee shall place requests for an increase in the order of receipt of all applications, assign each request a new application number and review each request separately from the original eligibility application. The reviewing committee shall consider the application at its next scheduled meeting, but within thirty (30) days of receipt, and may request additional information from the applicant to assist in its evaluation of the request. The reviewing committee shall determine approval using the same criteria of the review process and based on the availability of any remaining credits for the fiscal year in which the request is received. The Film Office shall notify the eligible company in writing of the reviewing committee's decision.

5.7. Other Revisions to Application. – If an eligible company seeks to revise its original eligibility application for a qualified project for reasons other than those identified in
subsection 5.6 of this rule, the eligible company shall submit
an application for modification to the Film Office, which
shall be submitted by and bear the same signature as the
person who submitted the original eligibility application, or
a duly authorized representative. The reviewing committee
shall consider the application at its next scheduled meeting,
but within thirty (30) days of receipt, and may request
additional information from the applicant to assist in its
evaluation of the request. The reviewing committee shall
determine the approval using the same criteria of the review
process. The Film Office shall notify the eligible company
in writing of the reviewing committee's decision.

And by renumbering the remaining subsections;

And,

On page ten, subsection 6.1., by striking out “4.1.e.” and
inserting in lieu thereof “4.1.d.”.

(d) The legislative rule filed in the State Register on
August 29, 2008, authorized under the authority of section
five, 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 January 12, 2009, relating to the State
Tax Department (Electronic Filing and Payment of Special
District Excise Tax, 110 CSR 39), is authorized.

(e) The legislative rule filed in the State Register on
August 29, 2008, authorized under the authority of section
two-b, article ten, chapter eight 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 January 12, 2009, relating to the State
Tax Department (Withholding or Denial of Personal Income
Tax Refunds from Taxpayers Who Owe Municipal Costs, Fines, Forfeitures or Penalties, 110 CSR 40), is authorized.

(f) The legislative rule filed in the State Register on August 29, 2008, 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 January 12, 2009, relating to the State Tax Department (Exchange of Information Agreement between the State Tax Division and the Department of Health and Human Resources Office of the Inspector General Medicaid Fraud Control Unit, 110 CSR 50E), is disapproved.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on August 29, 2008, 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 February 20, 2009, relating to the Insurance Commissioner (Long-term Care Insurance, 114 CSR 32), is authorized.

(b) The legislative rule filed in the State Register on August 29, 2008, 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 February 20, 2009, relating to the Insurance Commissioner (Actuarial Opinion and Memorandum, 114 CSR 41), is authorized.

(c) The legislative rule filed in the State Register on August 29, 2008, 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 October 22, 2008, relating to the
Insurance Commissioner (Continuing Education for
Individual Insurance Producers, 114 CSR 42), is authorized,
with the following amendment:

On page 11, subdivision 8.5.a., by striking out the words
"within fifteen (15) days of the date of hearing" and inserting
in lieu thereof the words "not less than fifteen (15) days prior
to the date of hearing".

(d) The legislative rule filed in the State Register on
August 14, 2008, 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 February 20, 2009, relating to the
Insurance Commissioner (Viatical Settlements, 114 CSR 80),
is authorized.

(e) The legislative rule filed in the State Register on
August 14, 2008, 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 February 20, 2009, relating to the
Insurance Commissioner (Discount Medical Plan
Organizations and Discount Prescription Drug Plan
Organizations, 114 CSR 83), is authorized.

(f) The legislative rule filed in the State Register on
August 29, 2008, 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 February 20, 2009, relating to the
Insurance Commissioner (Professional Employer Organizations, 114 CSR 85), is authorized with the following amendments:

On page 1, subsection 2.1., after the words 'voting stock' by striking the word 'or' and inserting in lieu thereof the word 'of';

On page 1, subdivision 2.3.a, after the word 'hiring' by inserting the words 'his, her or';

On page 2, subsection 3.1., after the words 'itself out as providing' by omitting the comma, and after the words 'professional employer' by inserting the word 'organization';

On page 2, subdivision 3.2.b, after the words 'fee of' by striking the word '$300' and inserting in lieu thereof the words '$200, and an annual report fee of $100';

On page 2, subdivision 3.2.h., by striking out said subdivision 3.2.h. in its entirety and inserting in lieu thereof a new subdivision 3.2.h. to read as follows:

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

On page 3, subdivision 3.2.l., in the last sentence of the subdivision, after the words 'certificate of authority' by inserting the words 'to do business in the state, issued by the Secretary of State,';

And,

On page 3, subsection 3.4 after the words 'file for renewal of' by striking the word 'their' and inserting in lieu
thereof the word ‘its’, and after the words ‘accompanied by a fee of’ by striking the word ‘$300’ and inserting in lieu thereof the words ‘$200 for the application fee and $100 for the annual report.’

(g) The legislative rule filed in the State Register on August 29, 2008, 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 October 22, 2008, relating to the Insurance Commissioner (Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values, 114 CSR 86), is authorized.

§64-7-3. Racing Commission.

The legislative rule filed in the State Register on July 29, 2006, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, approved for promulgation by the Legislature on March 11, 2006 and refiled in the State Register on May 5, 2006, relating to the Racing Commission (Greyhound Racing, 178 CSR 2) is authorized with the following amendment:


2-53.1. General physical requirements.

53.1.a. Any public training track must be approved and licensed by the commission. Only a public training track meeting the following criteria shall be eligible to receive funds as provided in WVC §19-23-10.

53.1.b. The state may own or operate or both own and operate any training track built in this state, or a training track may be on land leased at fair market value for a period of
twenty years. The state may contract operations to a private entity. Any lease or contract for services will follow the requirements of article three, chapter five-a of this code and the requirements of the Department of Administration regarding purchasing.

53.1.b.1. The track compound shall have (1) a minimum area of twenty acres for development of the initial facility and an additional ten acres available for future expansion, (2) a ten-thousand-gallons-per-minute sewer plant, (3) adequate ingress and egress for safety and accessibility and (4) adequate public parking.

53.1.b.2. The track shall be at least 1,320 feet in circumference or 1/4 mile in length, and the track shall have adequate in-ground heating elements to ensure year-round training.

53.1.b.3. The track shall have an approved racing surface, rails, lure, timing equipment, and starting box. The track surface shall consist of at least six inches of silt surface, followed by at least six inches of fill sand, followed by two inches of rigid insulation with an under-slab membrane.

53.2. Security requirements.

53.2.a. Security shall be adequate to ensure the safety of persons and dogs. The training track must have the following minimum security measures at a kennel compound.

53.2.b. The kennel compound must be surrounded by a perimeter fence which will reduce the likelihood of unauthorized entry. The perimeter fence must be approved by the commission’s chief investigator.

53.2.b.1. The training track must have an appropriate check in and out system which will ensure that only those
individuals who are licensees or authorized visitors and whose duties clearly require entry to the area will be allowed access.

53.2.b.2. No law-enforcement officer, employee of the commission, or employee of a licensee, when in the performance of official duties, may be denied entry to the kennel compound. All visitors to the kennel compound will be accompanied by a commission representative, the licensee sponsoring the visitor or the licensee’s security personnel.

53.2.b.3. Access records will be available to the commission, its investigative personnel and the board of judges on request.

53.2.b.4. In a case of an emergency a veterinarian licensed by the West Virginia State Board of Veterinarian Examiners may be allowed in the kennel compound if accompanied by appropriate personnel.

53.2.b.5. At least one fire extinguisher shall be installed on the exterior wall of each kennel enclosure. The type and size of fire extinguisher must meet the State Fire Marshal’s standards.

53.2.b.6. A veterinarian licensed by West Virginia may possess, transport or use any drug or medication which by federal or state law requires a prescription within the confines of the kennel compound.

53.2.b.6.A. A person having a legally valid prescription which includes a complete statement of the uses and purposes of the medication upon the medicine container may possess, transport or use a drug or medication which by federal or state law requires a prescription within the confines of the kennel compound if a copy of the prescription has been filed.
with the commission veterinarian and he or she has approved
the use of the medication prior to its use on a greyhound.

53.2.b.6.B. Over the counter drugs are allowed in the
kennel compound however, the medication must be in the
original container bearing the manufacturer's label with the
serial or lot number.

53.2.b.6.C. While in the compound all medications must
be stored in locked cabinets in the kennel.

53.2.b.6.D. The trainer must provide a list of all drugs or
medications in the trainer's kennel to the commission
veterinarian on a form provided by the commission
veterinarian. The trainer is responsible for updating the list
on a daily basis so that at all times it reflects the current drugs
or medications in the trainer's kennel. A copy of the current
list with the commission veterinarian's initials or signature on
it must be posted in the trainer's kennel next to the
medication cabinet.

53.3. Operation and Maintenance of Kennel Compound

53.3.a. No living quarters are provided and overnight
stays will not be permitted except for emergencies. For
emergency needs that require 24 hour assistance to a sick or
injured greyhound the stay must first be approved by the
training track’s chief of security.

53.3.b. The following restrictions apply to entry to the
compound during the race meet, beginning with the start of
official schooling. The kennel compound is a restricted area
which requires special security controls and identity
verification by security for all persons entering and leaving
the compound:
53.3.b.1. The person is a race-meet licensee official, a designated facility employee, or a West Virginia Racing Commission official or employee, each of whom shall present proper identification to the kennel compound security officer;

53.3.b.2. Designated service-company personnel such as a licensed food vendor, electrical maintenance and repair, equipment and building servicing, telephone and utilities service, or garbage collection. These individuals do not require a kennel compound pass, but they must properly identify themselves and their purpose for entering and leaving the facility with the security officer prior to entering and leaving the facility.

53.3.b.3. Visitors to the compound are discouraged; however, the facility licensee may develop a visitor pass system subject to the approval of the commission.

53.3b.4. Alcoholic beverages are not allowed in the kennel compound.

53.4.1. The facility licensee shall be responsible for providing garbage and waste disposal;

53.4.2. Each kennel is responsible for the daily pick up of all turn-out pen waste;

53.4.3. Each kennel is responsible for the regular watering of turn-out pens to minimize odor;

53.4.4. A 5 mile per hour speed limit shall be posted in the kennel compound.

§64-7-4. Lottery Commission.

The legislative rule filed in the State Register on April, 20, 2004, under the authority of section four hundred two,
article twenty-two-b, chapter twenty-nine of this code, approved for promulgation by the Legislature on March 12, 2004, relating to the lottery commission (Limited Video Lottery, 179 CSR 5), is authorized with the following amendments:

§179-5-35. Prohibition Against Extending Credit.

35.1. A video lottery retailer shall not extend credit, in any manner, to a player to enable the player to play a video lottery game.

35.2. For purposes of this rule, a video lottery retailer shall be deemed to be extending credit when he or she knows or has reason to know that the proceeds of the check will be used solely to play or continue to play a video lottery game.

CHAPTER 149

(Com. Sub. for H.B. 2218 - By Delegates Brown, D. Poling, Talbott, Miley, Overington and Sobonya)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 7, 2009.]

CLERK'S NOTE: It has been determined that Com. Sub. for H.B. 2218, originally styled as Chapter 149, was incorrectly enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, Com. Sub. for H.B. 2218 did not become law.
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 Accountancy to promulgate a legislative rule relating to the Board and rules of professional conduct; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to a schedule of charges for inspection services: fruit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule
relating to the disposal of dead poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Board of Architects to promulgate a legislative rule relating to the fees for registration of architects; authorizing the Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of dental corporations; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training standards; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary, complaint procedures, continuing education, and physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to the establishment and regulation of a restricted license issued to an applicant in extraordinary circumstances; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and the practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the regulation of charitable clinic pharmacies; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to general provisions; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies, standards and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to student temporary permits; authorizing the Secretary of State to promulgate a
legislative rule relating to the administration of the address confidentiality program; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to a fee schedule; authorizing the Treasurer’s Office to promulgate a legislative rule relating to the selection of state depositories for receipt accounts; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees.

Be it enacted by the Legislature of West Virginia:

That article 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 Accountancy.
§64-9-4. Board of Dental Examiners.
§64-9-5. Governor’s Committee on Crime, Delinquency and Correction.
§64-9-6. Board of Medicine.
§64-9-7. Board of Pharmacy.
§64-9-10. Board of Respiratory Care.
§64-9-11. Secretary of State.
§64-9-14. Board of Veterinary Medicine.

§64-9-1. Board of Accountancy.

1 The legislative rule filed in the State Register on the twenty-ninth day of August, two thousand eight, authorized under the authority of section four, article nine, chapter thirty of this code, modified by the Board of Accountancy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of January, two thousand nine, relating to the Board
of Accountancy (the Board and rules of professional conduct, 1 CSR 1), is authorized, with the following amendment:

On page 2, former subsection 2.9., by reinserting the stricken language in said former subsection 2.9. and renumbering the subsection as subsection 2.10 and renumbering the remaining subsections in the section accordingly;

On page 3, subsection 2.10 which is renumbered as subsection 2.11 by the above amendment, after the word “Reciprocal” by inserting the words “substantial equivalency” and in the same subsection after the words “issued under” by striking out the words “reciprocal regulations of prior law” and inserting in lieu thereof the words “the provisions of W. Va. Code §30-9-9”;

On page 6, subdivision 4.1.c., in the second sentence of said subdivision after the words “a West Virginia registered public accountant or” by inserting the words “a holder of”;

On page 7, in the title to §1-1-5., after the word “Reciprocal” by inserting the words “Substantial Equivalency”;

On page 7, subsection 5.1., after the words “application for a reciprocal” by inserting the words “substantial equivalency”;

On page 7, subdivision 5.1.a., after the word “Reciprocal” by inserting the words “Substantially Equivalent”;

On page 8, subdivision 5.1.a., after the word “reciprocal” by inserting the words “substantially equivalent”;

On page 8, subdivision 5.1.b., after the word “Reciprocal” by inserting the words “Substantially Equivalent”;
39 On page 8, subdivision 5.1.b., after the words “Board shall issue a reciprocal” by inserting the words “substantially equivalent”;

42 On page 8, subdivision 5.1.c., after the word “Reciprocal” by inserting the words “Substantially Equivalent”;

45 On page 8, subdivision 5.1.c., after the words “Board shall issue a reciprocal” by inserting the words “substantially equivalent”;

48 On page 9, paragraph 5.1.d, after the word “Reciprocal” by inserting the words “Substantial Equivalency”;

50 On page 10, paragraph 5.1.d.1., after the words “issuance of a reciprocal” by inserting the words “substantial equivalency”;

53 On page 10, paragraph 5.1.d.2., after the words “received a certificate” by striking out the remainder of the paragraph and inserting in lieu thereof the words “he or she may not establish a place of business in this state.”;

57 On page 10, paragraph 5.1.d.3, by striking out said paragraph 5.1.d.3 in its entirety;

59 On page 19, subdivision 6.8.e., at the beginning of the sentence before the words “In any case” by inserting the words “After a hearing”;

62 On page 19, subdivision 6.8.e., in the last sentence of the subdivision, after the words “for the examination,” by striking out the remainder of the sentence and inserting in lieu thereof the words “a copy of the final order containing findings of fact and conclusions of law.”;
On page 20, subdivision 7.3.a., in the last sentence of the subdivision, after the words “the Board shall” by striking out the words “apply the following standards” and inserting in lieu thereof the words “consider whether”;

On page 21, paragraph 7.3.a.1, after the words “The program” by striking out the words “should contribute” and inserting in lieu thereof the word “contributes”;

On page 21, paragraph 7.3.a.2., after the words “objectives of a program” by striking out the word “should”;

On page 21, paragraph 7.3.a.3., after the words “for the program” by striking out the words “should be stated” and inserting in lieu thereof the words “are stated with specificity”;

On page 21, paragraph 7.3.a.4., after the words “used in programs” by striking out the words “should be” and inserting in lieu thereof the word “are”;

On page 21, paragraph 7.3.a.5., after the words “Program content” by striking out the words “should be” and inserting in lieu thereof the word “is”;

On page 21, paragraph 7.3.a.6., after the word “Programs” by striking out the words “should be” and inserting in lieu thereof the word “are”;

On page 21, paragraph 7.3.a.7., after the word “Programs” by striking out the word “should”;

On page 27, subsection 12.1., after the words “practitioner or” by striking out the words “business entity” and inserting in lieu thereof the word “firm”;

And,
On page 27, subsection 12.1., after the words “authorization issued by this Board” by striking out the remainder of subsection 12.1. in its entirety and inserting in lieu thereof the words “unless the individual practitioner or firm meets the substantial equivalency practice privilege exceptions below:

a. Individual practitioners who have substantial equivalency practice privileges who provide only compilation services performed in accordance with Statements on Standards for Accounting and Review Services who:

1. Sign compilation reports as a certified public accountant;

2. Meet the competency requirements set forth in the professional standards for those services; and

3. Are undergoing a peer review program that conforms with applicable laws and rules;

b. Out-of-state firms who provide only compilation services performed in accordance with the Statements on Standards for Accounting and Review Services who:

1. Meet firm ownership requirements;

2. Are undergoing a peer review program that conforms with applicable rules; and

3. Performs the services through an individual with substantial equivalency practice privileges.”.


(a) The legislative rule filed in the state register on the thirtieth day of July, two thousand eight, authorized under the
authority of section five, article two, chapter nineteen, of this
code, relating to the Commissioner of Agriculture (schedule
of charges for inspection services: fruit, 61 CSR 8B), is
authorized.

(b) The legislative rule filed in the state register on the
twenty-ninth day of August, two thousand eight, authorized
under the authority of section two, article nine, chapter
nineteen, of this code, modified by the Commissioner of
Agriculture to meet the objections of the legislative rule-
making review committee and refiled in the state register on
the twenty-first day of October, two thousand eight, relating
to the Commissioner of Agriculture (animal disease control,
61 CSR 1), is authorized.

(c) The legislative rule filed in the state register on the
thirtieth day of July, two thousand eight, authorized under the
authority of section thirty-four-a, article nine, chapter
nineteen, of this code, modified by the Commissioner of
Agriculture to meet the objections of the legislative rule-
making review committee and refiled in the state register on
the twenty-ninth day of September, two thousand eight,
relating to the Commissioner of Agriculture (disposal of dead
poultry, 61 CSR 1C), is authorized.

(d) The legislative rule filed in the state register on the
thirtieth day of July, two thousand eight, authorized under the
authority of section three, article fourteen, 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-ninth
day of September, two thousand eight, relating to the
Commissioner of Agriculture (commercial feed, 61 CSR 5),
is authorized.

(a) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand eight, authorized under the authority of section one, article twelve, chapter thirty, of this code, relating to the Board of Architects (fees for registration of architects, 2 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand eight, authorized under the authority of section one, article twelve, chapter thirty, of this code, modified by the Board of Architects to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, two thousand nine, relating to the Board of Architects (registration of architects, 2 CSR 1), is authorized, with the following amendment:

On page 5, paragraph 3.11.2.d., after the words “all documents” by striking out the remainder of paragraph 3.11.2.d. and inserting in lieu thereof the words “exempt from disclosure by the provisions of W. Va. Code §29B-1-4.”;

On page 5, subsection 3.13., after the words “web site” by striking out the words “at www.wvbrdarch.org”;  

On page 6, subdivision 5.1.2., after the words “Board considers the” by striking out the words “qualifications to be equivalent” and inserting in lieu thereof the words “experience to be equivalent to the registration requirements”;  

And,  

On page 7, subsection 8.2., after the words “web site” by striking out the words “at www.wvbrdarch.org”.

§64-9-4. Board of Dental Examiners.
(a) The legislative rule filed in the state register on the fifteenth day of July, two thousand eight, 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 twenty-third day of January, two thousand nine, relating to the Board of Dental Examiners (rule for the West Virginia Board of Dental Examiners, 5 CSR 1), is authorized, with the following amendment:

On page ten, subsection 8.7(j)(8), following the word "teeth" and the period by striking out the remainder of the subdivision and inserting in lieu thereof the words:

"The dental hygienist and a licensed dentist shall attempt to reach a collaborative agreement regarding such treatment. If such an agreement cannot be reached then the dental hygienist shall have a written order from a licensed dentist prescribing such treatment."

(b) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand eight, 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 December, two thousand eight, relating to the Board of Dental Examiners (formation and approval of dental corporations, 5 CSR 6), is authorized.

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

The legislative rule filed in the state register on the first day of August, two thousand eight, authorized under the authority of section three, article twenty-nine, chapter thirty, of this code, modified by the Governor’s Committee on
Crime, Delinquency and Correction to meet the objections of
the legislative rule-making review committee and refiled in
the state register on the seventeenth day of February, two
thousand nine, relating to the Governor’s Committee on
Crime, Delinquency and Correction (law enforcement
training standards, 149 CSR 2), is authorized, with the
following amendments:

On page 3, subsection 3.7, after the words “and defensive
tactics” by inserting the word “training.”;

On page 5, subdivision 5.1.a., after the words “law
enforcement” by striking out the words “instructor's
certification” and inserting in lieu thereof the words
“instructors’ certifications”;

On page 6, subdivision 5.1.b., after the words “keep
their” by striking out the word “certification” and inserting in
lieu thereof the word “certifications”;

On page 6, paragraph 5.1.b.1., after the word “original”
by striking out the word “certification” and inserting in lieu
thereof the word “certifications”;

On page 6, subdivision 5.2.a., after the word “shall” by
striking out the words “have the following”;

On page 6, paragraph 5.2.a.1., at the beginning of the
sentence before the word “Experience” by inserting the word
“Have”;

On page 6, paragraph 5.2.a.2., at the beginning of the
sentence before the words “a handgun” by striking out the
word “Completed” and inserting in lieu thereof the word
“Complete”;
On page 6, subdivision 5.2.b., after the words "keep their" by striking out the word "certification" and inserting in lieu thereof the word "certifications";

On page 7, paragraph 5.2.b.1., after the words "original instructor" by striking out the word "certification" and inserting in lieu thereof the word "certifications";

On page 7, subdivision 5.2.c., after the words "original instructor" by striking out the word "certification" and inserting in lieu thereof the word "certifications";

On page 7, subdivision 5.5.d., after the words "omitted information" by striking out the word "required";

On page 8, subsection 6.3., after the words "to obtain 75% on" by striking out the word "a" and inserting in lieu thereof the word "an";

On page 9, subsection 8.1., inserting a comma after the words "but are not limited to";

On page 9, subsection 8.1., after the words "job description and" by striking the words "they must" and inserting in lieu thereof the words "the ability to";

On page 9, subdivision 8.1.a., after the words "training requirements for" by striking out the word "such" and inserting in lieu thereof the word "the";

On page 9, subdivision 8.1.a., after the words "position, and" by inserting the word "to";

On page 10, paragraph 8.3.a.11., after the words "Check for" by striking out the words "wants or" and after the words "persons through" by striking out the word "DMV/NCIC" and inserting in lieu thereof the word "NCIC";
On page 18, subparagraph 8.5.d.1.B., after the word “eyeglasses” by striking out the words “is commonly accepted”;

On page 18, subparagraph 8.5.d.1.F., after the words “perform the essential” by striking out the word “task” and inserting in lieu thereof the word “tasks”;

On page 18, subparagraph 8.5.d.2.A., after the words “the applicant” by striking out the words “should not have or”;

On page 18, subparagraph 8.5.d.3.C., after the words “or mouth” by inserting a comma and the following words “except as described in subparagraphs 8.5.d.3.A. and 8.5.d.3.B.”;

On page 21, subparagraph 8.5.d.7.L., after the words “e.g.,” by striking out the word “Scleroderm” and inserting in lieu thereof the word “Scleroderma”;

On page 21, subparagraph 8.5.d.8.K., after the words “Tract Infection” by striking out the words “(now disqualifying)”;

On page 23, paragraph 8.5.d.13., after the words “listed in this” by striking the word “section” and inserting in lieu thereof the word “subsection”;

On page 27, subsection 13.4., after the words “and the head of” by striking the word “each” and inserting in lieu thereof the words “the applicant's employing”;

On page 31, subdivision 16.1.h., at the beginning of the sentence by striking out the word “Whose” and inserting in lieu thereof the words “Having his or her”;

And,
On page 31, subsection 16.4., after the words “outlined in this” by striking through the word “rule” and inserting in lieu thereof the word “section”.

§64-9-6. Board of Medicine.

(a) The legislative rule filed in the state register on the eighteenth day of July, two thousand eight, authorized under the authority of section sixteen, 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 nineteenth day of November, two thousand eight, relating to the Board of Medicine (licensure, disciplinary and complaint procedures; continuing education; and physician assistants, 11 CSR 1B), is authorized.

(b) The legislative rule filed in the state register on the eighteenth day of July, two thousand eight, authorized under the authority of section ten, 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 fifteenth day of October, two thousand eight, relating to the Board of Medicine (establishment and regulation of restricted license issued to an applicant in extraordinary circumstances, 11 CSR 2), is authorized, with the following amendment:

On page three, subsection 3.8. after the word “not” by striking out the word “be”.

§64-9-7. Board of Pharmacy.

(a) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand eight, authorized under the authority of section twelve, article five, chapter thirty, of this code, modified by the Board of Pharmacy to
meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, two thousand nine, relating to the Board of Pharmacy (licensure and the practice of pharmacy, 15 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand eight, authorized under the authority of section thirty, article five, chapter thirty, of this code, modified by the Board of Pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, two thousand nine, relating to the Board of Pharmacy (immunizations administered by pharmacists, 15 CSR 12), is authorized.

(c) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand eight, authorized under the authority of section one, article five, chapter thirty, of this code, modified by the Board of Pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, two thousand nine, relating to the Board of Pharmacy (regulation of charitable clinic pharmacies, 15 CSR 13), is authorized, with the following amendment:

On pages one and two, section seven, by striking out all of subsection 1.5.


The legislative rule filed in the state register on the twenty-eighth day of August, two thousand eight, authorized under the authority of section five, article twenty, chapter thirty, of this code, modified by the Board of Physical Therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on the
twenty-fourth day of October, two thousand eight, relating to
the Board of Physical Therapy (general provisions, 16 CSR
1), is authorized, with the following amendments:

On page 1, subsection 16-1-2.4, after the words
“assistance in the practice of physical therapy.” by striking
out the following sentence, “Massage therapists, exercise
physiologists, athletic trainers or other persons who have
technical or professional education or training, and who assist
the physical therapist, should be considered physical therapy
aides and be represented as such.”;

On page 3, subsection 16-1-7.2, by removing the
underlined language and inserting in lieu thereof the
following, “provide on-site supervision.”;

On page 4, subsection 16-1-9.1(c)(3), by removing the
following new language, “physical therapists holding a
temporary permit”;

On page 7, subdivision 16-1-11.2.b. by striking out the
dollar amount “$110.00” and inserting in lieu thereof the
dollar amount “$220.00”;

And,

On page 7, subdivision 16-1-11.2.g. by striking out the
dollar amount “$70.00” and inserting in lieu thereof the
dollar amount “$140.00”.


(a) The legislative rule filed in the state register on the
twenty-ninth day of July, two thousand eight, authorized
under the authority of section four, article seven, chapter
thirty, of this code, modified by the Board of Examiners for
Registered Professional Nurses to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the ninth day of January, two thousand nine,
relating to the Board of Examiners for Registered
Professional Nurses (policies, standards and criteria for the
evaluation and accreditation of colleges, departments or
schools of nursing, 19 CSR 1), is authorized, with the
following amendment:

On page 3, subsection 4.1, after the words “on-site visit
is” by reinserting the stricken words “fifty dollars ($50.00),
and by striking the underscored words “as set forth in the
board’s rule Fees, 19 CSR 12.”.

(b) The legislative rule filed in the state register on the
first day of August, two thousand eight, authorized under the
authority of section fifteen-a, article seven, chapter thirty, of
this code, modified by the Board of Examiners for Registered
Professional Nurses to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the twentieth day of January, two thousand nine, relating
to the Board of Examiners for Registered Professional Nurses
(limited prescriptive authority for nurses in advanced
practice, 19 CSR 8), is authorized.

§64-9-10. Board of Respiratory Care.

The legislative rule filed in the state register on the
twenty-fifth day of July, two thousand eight, authorized
under the authority of section six-a, article thirty-four,
chapter thirty, of this code, modified by the Board of
Respiratory Care to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the twenty-third day of October, two thousand eight
relating to the Board of Respiratory Care (student temporary
permits, 30 CSR 9), is authorized, with the following
amendment:
On page 1, subdivision 2.2b, by striking subdivision 2.2b in its entirety and inserting in lieu thereof a new subdivision 2.2b to read as follows:

"2.2b. 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;".

§64-9-11. Secretary of State.

The legislative rule filed in the state register on the fifteenth day of February, two thousand eight, authorized under the authority of section one hundred ten, article twenty-eight-a, chapter forty-eight, 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 seventh day of August, two thousand eight, relating to the Secretary of State (administration of the address confidentiality program, 153 CSR 37), is authorized, with the following amendment:

On page 8, subsection 153-37-15, by striking section 15.1 in its entirety and inserting in lieu thereof the following:

"15.1. If any post election challenges are brought pertaining to the outcome of any election and it becomes necessary to check the validity of all absentee ballots cast in the election by verifying the names and addresses of all voters casting absentee ballots, a protected records voter's ballot shall not be included in the review unless the county canvassing board determines that such a ballot would be determinative of a county election outcome. When the county canvassing board has determined that review of a protected records voter's ballot is necessary, the designated county contact shall verify the protected records voter's ballot, in
executive session, using extreme caution to ensure continued confidentiality.

15.2. When the Secretary of State determines the review of a protected records voter's ballot is necessary to determine the outcome of any election that would be determined by voters outside that county, the county canvassing board shall review the protected ballots."


The legislative rule filed in the state register on the twenty-eighth day of July, two thousand eight, authorized under the authority of section three, article thirty, chapter thirty, of this code, relating to the Board of Social Work Examiners (fee schedule, 25 CSR 3), is authorized.


The legislative rule filed in the state register on the twenty-ninth day of August, two thousand eight, authorized under the authority of section two, article one, chapter twelve, of this code, modified by the Treasurer’s Office to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of February, two thousand nine, relating to the Treasurer’s Office (selection of state depositories for receipt accounts, 112 CSR 7), is authorized, with the following amendments:

On page 3, beginning on line twelve, by striking out all of subdivisions 3.1.b. and 3.1.c. and inserting in lieu thereof the following:

“3.1.b. Be insured by an agency of the federal government;

3.1.c. For deposits of state funds in excess of any amount insured by an agency of the federal government, be insured by:
3.1.c.i. A deposit guaranty bond issued by a valid bankers' surety company acceptable to the Treasurer; and/or

3.1.c.ii. A collaterally secured bond, first approved by the Treasurer, in the amount of not less than Ten Thousand Dollars ($10,000.00)."

On page 6, following subsection 4.11., by adding a new subsection to read as follows:

"4.12. A deposit guaranty bond issued by an approved bankers' surety company to insure state funds on deposit with an eligible state depository may only secure those funds in the custody of the Treasurer."

On page 7, following subsection 5.3., by adding a new subsection to read as follows:

"5.4. If a state depository insured through a collaterally secured bond or through letters of credit becomes insolvent or in any way breaches its contract with the Treasurer and fails to cure the insolvency or breach within five (5) business days, the holder of the collateral or the obligor for the letters of credit for the depository shall, upon written demand from the Treasurer, within three (3) business days remit to the Treasurer the collateral securing state funds on deposit with the state depository."

And,

On page 8, subsection 8.1, following the words "with the Treasurer", by striking out the comma and the word "the" and inserting in lieu thereof a period and the word "The".

§64-9-14. Board of Veterinary Medicine.

The legislative rule filed in the state register on the twenty-ninth day of August, two thousand eight, authorized
under the authority of section four, article ten, chapter thirty, of this code, modified by the West Virginia, 1931, as amended, relating to authorizing the Board of Veterinary Medicine 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 eight, relating to the West Virginia, 1931, as amended, relating to the Board of Veterinary Medicine (schedule of fees, 26 CSR 6), is authorized.

CHAPTER 151

(Com. Sub. for H.B. 2170 - By Delegates Brown, D. Poling, Talbot, Miley, Overington and Sobonya)

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on April 24, 2009.]

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; 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; repealing certain legislative rules; authorizing the Development Office to promulgate a legislative rule relating to Brownfield Economic Development Districts; authorizing the Division of Labor to repeal a legislative rule relating to packaging and labeling; authorizing the Division of Labor to repeal a legislative rule relating to a method of sale of commodities; authorizing the Division of Labor to promulgate a legislative rule relating to the West Virginia Manufactured Housing Construction and Safety Standards Board; authorizing the Division of Labor to promulgate a legislative rule relating to weights and measures calibration fees; authorizing the Division of Labor to promulgate a legislative rule relating to standards for weights and measures inspectors adoption of National Conference of Weights and Measures (NCWM) Handbook 130, 1987 edition; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Division of Natural Resources to promulgate a legislative rule relating to boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing license and stamp fees; authorizing the Division of Tourism to promulgate a legislative rule relating to the direct advertising grants program.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Development Office.

§64-10-2. Division of Labor.

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

§64-10-4. Division of Tourism.

§64-10-1. Development Office.

1 The legislative rule filed in the state register on the fifteenth day of August, two thousand eight, authorized under the authority of section six-a, article two, chapter five-b, of this code, modified by the Development Office to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, two thousand nine, relating to the Development Office (brownfield economic development districts, 145 CSR 11), is authorized.

§64-10-2. Division of Labor.

1 (a) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section three, article one, chapter forty-seven, of this code, relating to the Division of Labor (packaging and labeling, 42 CSR 10), is authorized.

6 (b) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section three, article one, chapter forty-seven, of this code, relating to the Division of Labor (method of sale of commodities, 42 CSR 11), is authorized.

12 (c) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section four, article nine,
chapter twenty-one, of this code, relating to the Division of Labor (West Virginia Manufactured Housing Construction and Safety Standards Board, 42 CSR 19), is authorized.

(d) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section three, article one, chapter forty-seven, of this code, relating to the Division of Labor (weights and measures calibration fees, 42 CSR 26), is authorized.

(e) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section three, article one, chapter forty-seven, 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 twenty-first day of November, two thousand eight, relating to the Division of Labor (standards for weights and measures inspectors adoption of National Conference of Weights and Measures (NCWM) Handbook 130, 1987 edition, 42 CSR 16), is authorized.

(f) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section three, article ten, 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 twenty-first day of November, two thousand eight, relating to the Division of Labor (Amusement Rides and Attractions Safety Act, 42 CSR 17), is authorized.

(g) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section eleven, article three-c, chapter twenty-one, of this code, modified by the Division of Labor to
meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of November, two thousand eight, relating to the Division of Labor (Elevator Safety Act, 42 CSR 21), is authorized.

(h) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand eight, authorized under the authority of section eleven, article three-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of January, two thousand nine, relating to the Division of Labor (supervision of elevator mechanics and apprentices, 42 CSR 21A), is authorized, with the following amendment:

On page two, section four, subsection 4.1, after the word “Escalators” by inserting a comma and the words “issued or effective on October 6, 2007, October 5, 2007, and March 31, 2006, respectively,”;

On page two, section four, subsection 4.1, after the word “Chairlifts” by inserting a comma and the words “published on August 28, 2008,”;

On page 3, paragraph 6.1.d.1., after the words “previous employers” by striking out the words “licensed to do business in this state”;

On page 4, subsection 7.3., after the words “An elevator mechanic” by reinserting the stricken word “may” and striking out the underlined word “shall”, and after the words “only under the” by striking out the word “direct”, and after the words “licensed elevator mechanic” by striking out the period and inserting in lieu thereof a comma and the words “as specifically set forth in West Virginia Code § 21-3C-10a(c).”;
On page 4, subdivisions 7.3.1 and 7.3.2, by striking out subdivisions 7.3.1 and 7.3.2 in their entirety;

On page 6, subdivision 10.3, after the words “the commissioner” by striking out the word “may”;

On page 6, subdivision 12.1, after the words “state that has” by inserting the words “requirements substantially equivalent to those provided for by W. Va. Code §21-3C-1 et seq. and this rule, and has”;

On page 7, subdivision 15.2, after the words “upon observing” by inserting the words “or learning of”;

On page 8, paragraph (a), after the words “The name” by striking out the words “and address”;

On page 8, paragraph (b), after the word “alleged” by striking out the words “unlawful act” and inserting in lieu thereof the word “infraction”;

On page 8, paragraph (c), after the word “alleged” by striking out the words “unlawful act” and inserting in lieu thereof the word “infraction”;

On page 8, paragraph (d), after the word “alleged” by striking out the words “unlawful act” and inserting in lieu thereof the word “infraction”.

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

(a) The legislative rule filed in the state register on the thirtieth day of July, two thousand eight, authorized under the authority of section seven, article one, chapter twenty, of this
code, relating to the Division of Natural Resources (boating, 58 CSR 25), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of July, two thousand eight, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

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

d) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand eight, authorized under the authority of section forty-two, 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 eighth day of September, two thousand eight, relating to the Division of Natural Resources (hunting, trapping and fishing license and stamp fees, 58 CSR 71), is authorized.

§64-10-4. Division of Tourism.

The legislative rule filed in the state register on the first day of August, two thousand eight, authorized under the authority of section nine, article two, chapter five-b, of this code, relating to the Division of Tourism (direct advertising grants program, 144 CSR 1), is authorized.
CHAPTER 152

(S.B. 468 - By Senators Laird, White, D. Facemire and Kessler)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §11A-3-24 of the Code of West Virginia, 1931, as amended, relating to requiring a purchaser of redemption property to pay in certified funds.

Be it enacted by the Legislature of West Virginia:

That §11A-3-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATE D AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment made by cashier check, money order, certified check or United States currency in the amount necessary to redeem, the clerk shall deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs and assigns. The clerk shall also note the fact of redemption on his or her record of delinquent lands.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall deposit into the sale
of tax lien surplus fund provided by section ten of this article
an amount equal to the amount of taxes, interest and charges
due on the date of the sale, plus the interest at the rate of one
percent per month from the date of sale to the date of
redemption, the amount of the subsequent years’ taxes paid
the day of or after the sheriff’s sale, plus interest at the rate of
one percent per month thereon from the date of payment to
the date of redemption, the amount of any additional
expenses incurred after January 1 of the year following the
sheriff’s sale for the preparation of the list of those to be
served with notice to redeem and any examination of title
performed and certified pursuant to the provisions of section
nineteen of this article, plus interest at a rate of one percent
per month from the date of payment to the date of
redemption. In cases where the clerk has not received from
the purchaser satisfactory proof of additional expenses
incurred after January 1 of the year following the sheriff’s
sale as provided in section twenty-three of this article, the
sheriff shall deposit the money received in the sale of tax lien
surplus fund provided by section ten of this article.

CHAPTER 153

(H.B. 2884 - By Delegates Campbell, Border, Perdue,
Webster and White)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §9-4E-1, §9-4E-2
and §9-4E-3, all relating to Medicaid; the development of a
public-private long-term care partnership program.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §9-4E-1, §9-4E-2 and §9-4E-3, all to read as follows:

ARTICLE 4E. LONG-TERM CARE PARTNERSHIP PROGRAM.

§9-4E-1. Purpose.

(a) The purpose of this program shall be to reduce Medicaid costs for long-term care by encouraging the purchase of private long-term care insurance policies that are covered under the “qualified state long-term care insurance partnerships.”

(b) It is the intent of the long-term care partnership to do all of the following:

(1) Provide incentives for individuals to insure against the costs of providing for their long-term care needs.

(2) Provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under Medicaid without first being required to substantially exhaust their resources.

(3) Alleviate the financial burden on the state’s medical assistance program by encouraging the pursuit of private initiatives.

§9-4E-2. Definitions.

(a) “Asset disregard” means, with regard to the state’s medical assistance program, disregarding any assets or
resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy.

(b) "Long-term care insurance" means a policy described in section four (a), article fifteen (A), chapter thirty-three of this code.

(c) "Long-term care partnership program" means a qualified state long-term care insurance partnership as defined in 42 U.S.C. 1396, Section 1917(b) of the Social Security Act.

(d) "Medicaid" means that assistance provided under a state plan implemented by subchapter nineteen, chapter seven, Title 42, United States Code, as that chapter has been and may hereafter be amended.

§9-4E-3. Authority.

(a) The program shall be administered by the Bureau for Medical Services. The bureau shall establish a long-term care partnership program in West Virginia in order to provide for the financing of long-term care through a combination of private insurance and Medicaid in accordance with federal requirements on qualified state long-term care insurance partnerships.

(b) Not later than ninety days after the effective date of this article, the Bureau for Medical Services shall file a state plan amendment, pursuant to Title XIX of the United States Social Security Act and any amendments thereto, to the United States Department of Health and Human Services to establish that the assets an individual owns and may retain under Medicaid and still qualify for benefits under Medicaid at the time the individual applies for benefits is increased.
dollar-for-dollar for each dollar paid out under the individual's long-term care insurance policy if the individual is a beneficiary of a qualified long-term care partnership program policy.

(c) An individual who is a beneficiary of a West Virginia long-term care partnership program and meets eligibility requirements is eligible for assistance under the state's medical assistance program using the asset disregard as provided under subsection (b).

(d) The Bureau of Medical Services shall pursue reciprocal agreements with other states to extend the asset disregard to West Virginia residents who purchased long-term care partnership policies in other states that are compliant with Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005, PL 109-171, and any applicable federal regulations or guidelines.

(e) Upon diminishment of assets below the anticipated remaining benefits under a long-term care partnership program policy, certain assets of an individual, as provided under subsection (b), shall not be considered when determining any of the following:

1. Medicaid eligibility;
2. The amount of any Medicaid payment;
3. Any subsequent recovery by the state of a payment for medical services or long-term care services.

(f) If the long-term care partnership program is discontinued, an individual who purchased a West Virginia long-term care partnership program policy before the date the program was discontinued shall be eligible to receive asset disregard if allowed as provided by Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005, PL 109-171.
AN ACT to amend and reenact §27-7-4 of the Code of West Virginia, 1931, as amended, relating to authorizing mental hygiene commissioners to sign readmission orders.

Be it enacted by the Legislature of West Virginia:

That §27-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS; ESCAPEES.

§27-7-4. Readmission of patients.

While any involuntary patient is out of the mental health facility under the provisions of section two or three of this article, he or she may be readmitted to the mental health facility on the basis of the original commitment. If there is reason to believe that it is in the best interest of the patient to be hospitalized, the chief medical officer of the mental health facility may issue a sworn notice for the immediate readmission of the patient, which notice shall contain facts concerning the original commitment and the current condition of the patient. This notice shall be sent to the clerk of the circuit court which ordered his or her admission, to the
clerk of the circuit court of the county of the patient's residence, to the circuit court or mental hygiene commissioner of the county in which the patient may be found and to the patient at the location where the patient may be found. Upon receipt of such notice, the circuit court or mental hygiene commissioner may, if satisfied that the condition of the patient warrants his or her return, authorize any health officer or police officer to take the patient into custody and transport him or her to the mental health facility where the notice originated.

CHAPTER 155

(Com. Sub. for S.B. 239 - By Senators McCabe, Foster, Palumbo, Wells and Kessler)

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7A-7-4a, relating to authorizing counties with a population exceeding 150,000 and a Class I municipality to approve metro government by a majority vote.

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 §7A-7-4a, to read as follows:

ARTICLE 7. ELECTIONS ON METRO GOVERNMENT.
§7A-7-4a. Modifying the percentage vote required to approve metro government in municipal and countywide elections from fifty-five percent to a majority in counties with populations in excess of 150,000.

(a) Notwithstanding any other provision of this chapter to the contrary, where the election is on the question of consolidation of a county with a population exceeding 150,000, based on the 2000 or 2010 census of population taken under the authority of the United States government, and a single Class I city that is the principal municipality of the county, then metro government becomes effective pursuant to the charter if a majority of the legal votes cast by the qualified voters of the principal city and a majority of the legal votes cast by the qualified voters of all incorporated and unincorporated areas of the affected county, excluding the principal city, approves the consolidation.

(b) As used in this section, a Class I city is a municipality so classified under section three, article one, chapter eight of this code.

CHAPTER 156

(Com. Sub. for H.B. 2877 - By Delegates Lawrence, Phillips, D. Poling, Stowers, Ferro, Argento and Schadler)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §11-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-4 of said code; and to amend and reenact §60-3A-24 of said code, all relating to changing the use of alcoholic beverages by
minors from a status offense to an act of juvenile delinquency; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That §11-16-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-1-4 of said code be amended and reenacted; and that §60-3A-24 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

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

(a) (1) Any person under the age of twenty-one years, who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $500 or shall be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not to exceed one year. Any person convicted under this section may be sentenced pursuant to the provisions of section one-a, article eleven-a, chapter sixty-two of this code.

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

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

(b) Any person under the age of twenty-one years who,
for the purpose of purchasing nonintoxicating beer,
misrepresents his or her age or who for such purpose presents
or offers any written evidence of age which is false,
fraudulent or not actually his or her own or who illegally
attempts to purchase nonintoxicating beer is guilty of a
misdemeanor and, upon conviction thereof, shall be fined an
amount not to exceed $100 or shall be confined in jail, or in
the case of a juvenile, a juvenile detention facility, for a
period not to exceed seventy-two hours, or both such fine and
confinement or, in lieu of such fine and confinement, may,
for the first offense, be placed on probation for a period not
exceeding one year.

(c) Any person who shall knowingly buy for, give to or
furnish nonintoxicating beer to anyone under the age of
MINORS [Ch. 156

(Ch. 156)

§49-1-4. Other definitions.

1 As used in this chapter:
(1) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities or any facility that provides care for unmarried mothers and their children;

(2) “Child advocacy center” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the following program components:

(A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients;

(B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center;

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices;

(D) Cultural competency and diversity: The child advocacy center promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community;

(E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing;
(F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to child advocacy center clients as part of the team response, either at the child advocacy center or through coordination and referral with other specialized medical providers;

(G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the child advocacy center or through coordination and referral with other appropriate treatment providers;

(H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the child advocacy center or through coordination with other providers, throughout the investigation and subsequent legal proceedings;

(I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis;

(J) Case tracking: Child advocacy centers must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location;

(3) "Community based", when referring to a facility, program, or service, means located near the juvenile's home or family and involving community participation in planning, operation and evaluation and which may include, but is not limited to, medical, educational, vocational, social and psychological guidance, training, special education,
(4) "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided;

(5) "Custodian" means a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings;

(6) "Department" or "state department" means the State Department of Health and Human Resources;

(7) "Division of Juvenile Services" means the division within the Department of Military Affairs and Public Safety pursuant to article five-e of this chapter;

(8) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding;

(9) "Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult;

(10) "Nonsecure facility" means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in such facility and which provides its residents access to the surrounding community with supervision;

(11) "Referee" means a juvenile referee appointed pursuant to section one, article five-a of this chapter, except
that in any county which does not have a juvenile referee, the
designate one or
duties which may be performed by a referee under this
chapter;

(12) "Secretary" means the Secretary of Health and
Human Resources;

(13) "Secure facility" means any public or private
residential facility which includes construction fixtures
designed to physically restrict the movements and activities
of juveniles or other individuals held in lawful custody in
such facility;

(14) "Staff-secure facility" means any public or private
residential facility characterized by staff restrictions of the
movements and activities of individuals held in lawful
custody in such facility and which limits its residents' access
to the surrounding community, but is not characterized by
construction fixtures designed to physically restrict the
movements and activities of residents;

(15) "Status offender" means a juvenile who has been
adjudicated as one:

(A) Who habitually and continually refuses to respond to
the lawful supervision by his or her parents, guardian or legal
custodian such that the child's behavior substantially
endangers the health, safety or welfare of the juvenile or any
other person;

(B) Who has left the care of his or her parents, guardian
or custodian without the consent of such person or without
good cause; or

(C) Who is habitually absent from school without good
cause;
127  (16) "Valid court order" means a court order given to a  
128 juvenile who was brought before the court and made subject  
129 to such order and who received, before the issuance of such  
130 order, the full due process rights guaranteed to such juvenile  
131 by the Constitutions of the United States and the State of  
132 West Virginia.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


1 (a) (1) Any person who is under the age of twenty-one  
2 years who purchases, consumes, sells, serves or possesses  
3 alcoholic liquor is guilty of a misdemeanor and, upon  
4 conviction thereof, shall be fined an amount not to exceed  
5 $500 or shall be confined in jail, or, in the case of a juvenile,  
6 a detention center, for a period not to exceed seventy-two  
7 hours, or both fined and imprisoned or, in lieu of such fine  
8 and incarceration, may, for the first offense, be placed on  
9 probation for a period not to exceed one year.

10  (2) Nothing in this article, nor any rule or regulation of  
11 the commissioner, shall prevent or be deemed to prohibit any  
12 person who is at least eighteen years of age from serving in  
13 the lawful employment of a licensee which includes the sale  
14 and serving of alcoholic liquor.

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

(b) Any person under the age of twenty-one years who,
for the purpose of purchasing liquor from a retail licensee,
misrepresents his or her age or who for such purpose presents
or offers any written evidence of age which is false,
fraudulent or not actually his or her own or who illegally
attempts to purchase liquor from a retail licensee is guilty of
a misdemeanor and, upon conviction thereof, shall be fined
an amount not to exceed $100 or confined in jail, or, in the
case of a juvenile, a detention facility, for a period not to
exceed seventy-two hours, or both fined and confined or, in
lieu of such fine and confinement, may, for the first offense,
be placed on probation for a period not exceeding one year.
Any person convicted under this section may be sentenced
pursuant to the provisions of section one-a, article eleven-a,
chapter sixty-two of this code.

(c) Any person who knowingly buys for, gives to or
furnishes to anyone under the age of twenty-one to whom he
or she is not related by blood or marriage any liquor from
whatever source is guilty of a misdemeanor and, upon
conviction thereof, shall be fined an amount not to exceed
$250 dollars or confined in jail for a period not to exceed ten
days, or both fined and confined.

(d) No person while on the premises of a retail outlet may
consume liquor or break the seal on any package or bottle of
liquor. Any person who violates the provisions of this
subsection is guilty of a misdemeanor and, upon conviction
thereof, shall be fined an amount not to exceed $100 or
confined in jail for a period not to exceed ten days, or both
fined and confined.
AN ACT to amend and reenact §17A-3-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17A-10-3 of said code, all relating to registration fees for vehicles; allowing a registrant to register a Class G vehicle for a two-year period; requiring all registrations for at least one full year; and facilitating expiration date changes.

Be it enacted by the Legislature of West Virginia:

That §17A-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17A-10-3 of said code be amended and reenacted, all to read as follows:

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

§17A-3-16. Expiration of registration and certificates of title.

(a) Every vehicle registration under this chapter and every registration card and registration plate issued under this
chapter expires at midnight on the last day of the month designated by the commissioner: Provided, That the commissioner may extend the period during which the registration plates may be used.

Certificates of title need not be renewed annually but remain valid until canceled by the division for cause or upon a transfer of any interest shown in the vehicle.

(b) Notwithstanding the provisions of this section or of any provision of this chapter, the commissioner shall adopt a staggered registration system whereby the registration of Class A motor vehicles is for a period of twelve consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year: Provided, That on or after July 1, 1997, the commissioner shall also offer an optional two-year registration system whereby the registration of all vehicles shall be for a period of twenty-four consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year. Under this option, all annual fees due at the time of registration shall be multiplied by two.

(1) On or after July 1, 1997, all Class A motor vehicles as defined in section one, article ten of this chapter shall be registered for a period of twelve or twenty-four consecutive calendar months. There hereby are established twelve registration periods, each of which shall start on day one of each calendar month of the year and shall end on the last day of month twelve from date of beginning. The period ending on January 31 is designated the first period; that ending on February 28 or 29 is designated the second; that ending on March 31 is designated the third; that ending on April 30 is designated the fourth; that ending on May 31 is designated the fifth; that ending on June 30 is designated the sixth; that ending on July 31 is designated the seventh; that ending on August 31 is designated the eighth; that ending on September
37 30 is designated the ninth; that ending on October 31 is
38 designated the tenth; that ending on November 30 is
39 designated the eleventh; and that ending on December 31 is
40 designated the twelfth.

41 (2) All Class A motor vehicles, which are operated for
42 the first time upon the public highways of this state to and
43 including day fifteen of any given month are subject to
44 registration and payment of the fee for the twelve- or 24-
45 month period commencing day one of the month of
46 operation. All Class A motor vehicles operated for the first
47 time upon the public highways of this state on and after day
48 sixteen of any given month are subject to registration and
49 payment of fee for the twelve- or 24-month period
50 commencing day one of the month of the next following
51 calendar month.

52 (c) On or before July 1, 1996, all Class T and Class R
53 vehicles shall be registered for a maximum period of three
54 years or portion thereof based on the number of years
55 remaining in the three year period designated by the
56 commissioner.

57 (d) On or before July 1, 2000, all Class C trailers shall be
58 registered for the duration of the owner’s interest in the trailer
59 and shall not expire until either sold or otherwise
60 permanently removed from the service of the owner.

61 (e) Notwithstanding the provisions of this section or of
62 any other provision of this chapter to the contrary, the
63 commissioner shall on or before July 1, 2010, offer an
64 optional two-year registration for Class G vehicles. The
65 commissioner may offer extended prorated registration
66 renewal cycles to accommodate changes in designated
67 expiration dates.
ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

(1) Class A. -- The registration fee for all motor vehicles of this class is $28.50: Provided, That the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee may be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) Class B. -- The registration fee for all motor vehicles of this class is as follows:

(A) For declared gross weights of eight thousand one pounds to sixteen thousand pounds -- $28 plus $5 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds eight thousand pounds.
(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds -- $78.50 plus $10 for each one thousand or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more -- $737.50 plus $15.75 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) Class G. -- The registration fee for each motorcycle or parking enforcement vehicle is $8: Provided, That the registration fee and any other fees required by this chapter for Class G vehicles shall be for at least one year and under an optional biennial registration system the annual fee shall be multiplied by two and paid biennially to the division.

(4) Class H. -- The registration fee for all vehicles for this class operating entirely within the state is $5; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, reduced by the amount that the mileage of the vehicles operated in states other than West Virginia bears to the total mileage operated by the vehicles in all states under a formula to be established by the Division of Motor Vehicles.

(5) Class J. -- The registration fee for all motor vehicles of this class is $85. Ambulances and hearses used exclusively as ambulances and hearses are exempt from the special fees set forth in this section.

(6) Class M. -- The registration fee for all vehicles of this class is $17.50.

(7) Class farm truck. -- The registration fee for all motor vehicles of this class is as follows:
(A) For farm trucks of declared gross weights of eight thousand one pounds to sixteen thousand pounds -- $30.

(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds -- $60.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds -- $90.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds -- $115.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds -- $160.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds -- $205.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to eighty thousand pounds -- $250:

Provided, That the provisions of subsection (a), section eight, article one, chapter seventeen-e of this code do not apply if the vehicle exceeds sixty-four thousand pounds and is a truck tractor or road tractor.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion of a year based on the number of years remaining in the three-year period designated by the commissioner:

(1) Class R. -- The annual registration fee for all vehicles of this class is $12.

(2) Class T. -- The annual registration fee for all vehicles of this class is $8.
(c) The fees paid to the division for a multiyear registration provided by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.

(d) The registration fee for all Class C vehicles is $50. On or before July 1, 2000, all Class C trailers shall be registered for the duration of the owner’s interest in the trailer and do not expire until either sold or otherwise permanently removed from the service of the owner: Provided, That a registrant may transfer a Class C registration plate from a trailer owned less than thirty days to another Class C trailer titled in the name of the registrant upon payment of the transfer fee prescribed in section ten of this article.

CHAPTER 158

(Com. Sub. for H.B. 2557 - By Delegates Webster, Guthrie, Tabb, M. Poling, Hamilton and Staggers)

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §46A-6A-2, §46A-6A-3 and §46A-6A-3a of the Code of West Virginia, 1931, as amended, all relating to repairing or replacing a new motor vehicle under a new motor vehicle warranty; providing a definition of “motor vehicle”; making the provisions related to the enforcement of new motor vehicle warranties applicable to vehicles registered and titled in this state, regardless of where the vehicle was purchased; setting forth the liability of an authorized dealer as
to new motor vehicle warranties; and disclosing to a consumer in writing as to any repairs made by an authorized dealer to a new motor vehicle.

Be it enacted by the Legislature of West Virginia:

That §46A-6A-2, §46A-6A-3 and §46A-6A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. CONSUMER PROTECTION-NEW MOTOR VEHICLE WARRANTIES.


§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.

§46A-6A-3a. Dealer's duty to disclose repairs to consumer.


When used in this article, the following words, terms and phrases shall have the meaning ascribed to them, except where the context indicates a different meaning:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a new motor vehicle used primarily for personal, family or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

(2) "Manufacturer" means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten new motor vehicles;
"Manufacturer's express warranty" and "warranty" mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty; and

"Motor vehicle" means any passenger automobile purchased in this state or registered and titled in this state, including any pickup truck or van registered as a Class A motor vehicle under the provisions of article ten, chapter seventeen-a of this code, and any self-propelled motor vehicle chassis of a motor home registered as a Class A or Class B motor vehicle under the provisions of article ten, chapter seventeen-a of this code.

§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.

(a) If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of the express warranties or within a period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever is the longer period, the manufacturer, its agent or its authorized dealer shall make the repairs necessary to conform the vehicle to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term.

(b) If the manufacturer, its agents or its authorized dealer are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall
replace the new motor vehicle with a comparable new motor vehicle which does conform to the warranties.

(c) No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that the dealership repairs have been carried out in a manner substantially inconsistent with the manufacturer's instruction. This section does not create any cause of action by a consumer against an authorized dealer.

§46A-6A-3a. Dealer's duty to disclose repairs to consumer.

All authorized dealers of new motor vehicles shall provide to any consumer a written disclosure of any repairs to a new motor vehicle that have a retail value of five percent of the manufacturer's suggested retail price and were performed after shipment from the manufacturer to the dealer, including damage to the new motor vehicle while in transit.

This disclosure requirement does not apply to identical replacement of stolen or damaged accessories or their components, tires or antennae.

For purposes of this section, a motor vehicle is not a new motor vehicle when it has been previously titled or the motor vehicle has been damaged in such a manner that, were the damage not repaired, the value and usability of the motor vehicle would be substantially impaired.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-6-4a; and to amend and reenact §8A-7-2 of said code, all relating to urban growth boundaries; definitions; providing new procedures for annexation without election and annexation by minor boundary adjustment for municipalities in growth counties that have an adopted countywide zoning ordinance which includes urban growth boundaries; setting requirements; and permitting urban growth boundaries in zoning ordinances.

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 §8-6-4a; and that §8A-7-2 of said code be amended and reenacted, all to read as follows:

8A. Land Use Planning.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.
PART III - ANNEXATION WITHOUT ELECTION.

§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of article twenty, chapter seven of this code that want to annex additional property without an election.

(b) For purposes of this section only:

(1) “Contiguous” means property that is next to, abutting and having a boundary that is coterminous with the municipality’s designated urban growth boundary. The length of a street, highway, road or other traffic or utility easement, streams, rivers or other natural topography are not to be used to determine if a property is contiguous: Provided, That the width of a street, highway, road or other traffic or utility easement, streams, rivers or other natural topography may be used to determine contiguous boundaries.

(2) “Urban growth boundary” means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective twenty-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word “boundary” shall be used in the name of the boundary. The
boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality's boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed ten years or upon request of the individual municipality.

(c) Procedure for a municipality to annex property within an urban growth boundary. --

(1) If the proposed property to be annexed by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality’s designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the provisions of section five of this article are followed, except that agreement with the county commission is not required.

(d) Procedure for a municipality to annex property within urban growth boundaries of two or more municipalities. --
If the proposed property to be annexed by a municipality is partially or wholly within another municipality’s urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) Procedure for a municipality to annex contiguous property outside an urban growth boundary. --

(1) If the proposed property to be annexed by a municipality is outside the municipality’s designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article, if:

(A) The proposed property to be annexed is contiguous to the municipality, as defined in this section; and

(B) The municipality has the county commission’s agreement.

(2) Prior to the agreement of the county commission to the annexation of the proposed property the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least fifteen days prior to the public hearing, publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.
(f) Procedure for a municipality to annex noncontiguous property outside an urban growth boundary. --

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality’s designated urban growth boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the municipality has the county commission’s agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;
(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and
(C) At least fifteen days prior to the public hearing, publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(2) After the public hearing and on-site notice, if the county commission finds, by a written record, that the proposed annexation is for the good of the county as a whole, then the county commission may agree to the annexation.

(g) Prior to the county commission entering an order for any annexation pursuant to this section, the annexed property shall be surveyed by a licensed professional surveyor and a metes and bounds description of the annexed property must be provided to the county commission in which the property is located.
(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-2. Contents of zoning ordinance.

(a) The following must be considered when enacting a zoning ordinance:

1. Promoting general public welfare, health, safety, comfort and morals;
2. A plan so that adequate light, air, convenience of access and safety from fire, flood and other danger is secured;
3. Ensuring attractiveness and convenience is promoted;
4. Lessening congestion;
5. Preserving historic landmarks, sites, districts and buildings;
6. Preserving agricultural land; and
7. Promoting the orderly development of land.

(b) A zoning ordinance may include the following:

1. Regulating the use of land and designating or prohibiting specific land uses;
(2) Authorizing flexible planning standards to create, redevelop, reuse, protect and enhance the physical qualities of the community;

(3) Designating historic districts and regulating the uses of land and the design of buildings within the historic district;

(4) Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;

(5) Establishing design standards and site plan approval procedures;

(6) Dividing the land of the governing body into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired or any combination of both;

(7) Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;

(8) Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory-built homes;

(9) Authorizing a process and standards for factory-built homes: Provided, That a governing body is prohibited from establishing a process and standards for regulating factory-built homes that is more restrictive than a process and standards for site-built homes;

(10) Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;
(11) Regulating traffic flow and access, pedestrian flow and access, parking and loading;

(12) Identifying flood-prone areas subject to periodic flooding and regulating with specific control the permitted use, type of construction and height of floor levels above base flood elevation permitted in the area so as to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters;

(13) Designating an airport area and establishing land-use regulations within a specific distance from the boundaries of the airport;

(14) Authorizing planned unit developments to achieve more efficient use of land and setting standards and regulations for the developments; and

(15) Identifying, establishing and designating urban growth boundaries, as defined in section four-a, article six, chapter eight of this code, for municipalities.

(c) A zoning ordinance shall:

(1) Create a board of zoning appeals;

(2) Specify certification requirements for zoning district maps that are consistent with the governing body’s comprehensive plan;

(3) Adopt procedures and requirements for nonconforming land uses;

(4) Adopt procedures and requirements for variances; and

(5) Adopt procedures and requirements for conditional use permits.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-16b, relating to authorizing municipalities to appoint special litter prevention officers by ordinance; and authorizing special litter prevention officers to perform their duties as provided for by ordinance.

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 §8-12-16b, 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.
§8-12-16b. Special litter prevention officers.

(a) A municipality that has adopted an anti-littering ordinance pursuant to section five of this article may provide, by ordinance, for the appointment of special litter prevention officers to aid in the enforcement of the municipal anti-littering ordinance.

(b) The ordinance enacted, pursuant to this section, must specify the duties to be performed by the special litter prevention officers and the required training such officers must undertake prior to commencement of their duties.

(c) Notwithstanding any other provision of this code, a special litter prevention officer may be presently employed by the municipality in another capacity. In the performance of the duties of special litter prevention officer, such officers shall be vested with the power to issue a citation, issue a summons, and sign a complaint. Such officers shall display at all times a badge or other sign of authority issued by the municipality.

(d) The governing body of the municipality may require such special litter prevention officers to give bond, payable to the municipality, in its corporate name, with such sureties and such penalties as the governing body may see fit, conditioned for the faithful performance of their duties.
AN ACT to amend and reenact §8-13-13 of the Code of West Virginia, 1931, as amended, relating to authorizing municipalities to file liens for delinquent service fees; requiring municipal ordinances to have assessment and collection procedures for the service fees; requiring administrative procedures by municipalities for imposition of liens; and requiring the right to appeal to circuit court.

Be it enacted by the Legislature of West Virginia:

That §8-13-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

PART III. SPECIAL CHARGES FOR MUNICIPAL SERVICES.

§8-13-13. Special charges for municipal services.

1 (a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement,
sewerage and sewage disposal, and the collection and
disposal of garbage, refuse, waste, ashes, trash and any other
similar matter, has plenary power and authority to provide by
ordinance for the installation, continuance, maintenance or
improvement of the service, to make reasonable regulations
of the service, and to impose by ordinance upon the users of
the service reasonable rates, fees and charges to be collected
in the manner specified in the ordinance.

(b) Any sewerage and sewage disposal service and any
service incident to the collection and disposal of garbage,
refuse, waste, ashes, trash and any other similar matter is
subject to the provisions of chapter twenty-four of this code.

(c) A municipality shall not have a lien on any property
as security for payments due under subsection (a) of this
section except as provided in subsection (d) of this section.

(d) A municipality has authority to enact an ordinance,
pursuant to this section, permitting it to file a lien on real
property located within the municipal corporate limits for
unpaid and delinquent fire, police or street fees. The
ordinance must provide an administrative procedure for the
municipality's assessment and collection of the fees. The
administrative procedure must require that, before any lien is
filed, the municipality will give notice to the property owner,
by certified mail, return receipt requested, that the
municipality will file the lien unless the delinquency is paid
by a date stated in the notice, which must be no less than
ninety days from the date the notice is mailed. The
administrative procedure must include the right to appeal to
the circuit court of the county in which the real property is
located. The circuit court shall consider the appeal under its
general authority, including but not limited to subsection (f),
section two, article two of chapter fifty-one of this code.

(e) Notwithstanding the provisions of section four, article
eleven of this chapter, any ordinance enacted or substantially
amended under the provisions of this section shall be
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 the publication is the municipality.

(f) In the event thirty percent of the qualified voters of the municipality, by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within forty-five days after the expiration of the publication, protest against the ordinance as enacted or amended, the ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the qualified voters of the municipality at a regular municipal election or special municipal election, as the governing body directs. Voting shall not take place until after notice of the submission is given by publication as provided in subsection (e) of this section.

(g) The powers and authority granted to municipalities and to the governing bodies of municipalities in this section are in addition and supplemental to the powers and authority named in any charters of the municipalities.

(h) Notwithstanding any other provisions of this section, if rates, fees and charges provided in this section are imposed by the governing body of a municipality for the purpose of replacing, and in amounts approximately sufficient to replace in its general fund amounts appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to an election duly called and held under the Constitution and laws of the state to authorize the issuance and sale of the municipality's general obligation bonds for public improvement purposes, the call for the election shall state that the governing body of the municipality proposes to impose rates, fees and charges in specified amounts under this section for the use of one or more of the services specified in subsection (a) of this section, which shall be related to the public improvement proposed to be made with the proceeds of the bonds, no notice, publication of notice, or
78 referendum or election or other condition or prerequisite to
79 the imposition of the rates, fees and charges shall be required
80 or necessary other than the legal requirements for issuance
81 and sale of the general obligation bonds.

CHAPTER 162

(S.B. 719 - By Senators Kessler, Williams, Unger, Laird
and Deem)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]

AN ACT to amend and reenact §8-14-24 of the Code of West
Virginia, 1931, as amended, relating to allowing a police
officer meeting certain requirements to keep, without charge,
his or her service weapon upon retirement.

Be it enacted by the Legislature of West Virginia:

That §8-14-24 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR
DEPARTMENTS; POWERS,
AUTHORITY AND DUTIES OF LAW-
ENFORCEMENT OFFICIALS AND
POLICEMEN; POLICE MATRON;
SPECIAL SCHOOL ZONE AND
PARKING LOT OR PARKING
BUILDING POLICE OFFICERS; CIVIL
SERVICE FOR CERTAIN POLICE
DEPARTMENTS.
§8-14-24. Right to receive complete standard uniform; right to acquire badge; and right to keep service weapon.

(a) A police officer, upon honorable retirement, is authorized to maintain at his or her own cost a complete standard uniform from the law-enforcement agency of which he or she was a member and shall be issued an identification card indicating his or her honorable retirement from the law-enforcement agency. The uniform may be worn by the officer in retirement only on the following occasions: Police Officer's Memorial Day, Law-Enforcement Appreciation Day, at the funeral of a law-enforcement officer or during any other police ceremony. The honorably retired officer is authorized to acquire a badge of the law-enforcement agency from which he or she is retired with the word "retired" placed on it.

(b) Upon retirement, a police officer is entitled to keep, without charge, his or her service weapon after a determination by the chief of police:

(1) That the police officer is retiring honorably with at least twenty years of recognized law-enforcement service; or

(2) That the police officer is retiring with less than twenty years of service and that he or she is totally physically disabled as a result of service as a police officer.

(c) Notwithstanding the provisions of subsection (b) of this section, the chief of police may not award a service weapon to any police officer who has been declared mentally incompetent by a licensed physician or a court of law, or who, in the opinion of the chief of police, constitutes a danger to any person or the community.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-19-22, relating to fire hydrants; requiring the marking of an inoperable fire hydrant; setting requirements for the marking; and defining inoperable.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-19-22, to read as follows:

ARTICLE 19. MUNICIPAL AND COUNTY WATER WORKS AND ELECTRIC POWER SYSTEMS.

§8-19-22. Identification requirement for fire hydrants that are inoperable or unavailable for use in emergency situations.

(a) The owner or operator of a fire hydrant or any device having the appearance of a fire hydrant that is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located, shall mark the fire hydrant or device, as
set out in subsection (b) of this section, if the owner or operator has actual knowledge that the fire hydrant or device is inoperable or is unavailable for use by an entity providing fire suppression services in a fire emergency.

(b) To mark the fire hydrant or device, the owner or operator of the fire hydrant or device shall:

(1) Paint the fire hydrant or device black if the fire hydrant or device is inoperable or unavailable for use; or

(2) Place a black tarp over the fire hydrant or device if the device is temporarily inoperable or temporarily unavailable for use in a fire emergency, for a period not to exceed fourteen days.

(c) For the purposes of this section, the word “inoperable” means a fire hydrant that does not produce water flow when activated.

CHAPTER 164

(S.B. 346 - By Senators Kessler, Browning, Foster, Jenkins, Laird, Minard, Oliverio, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall)

[Passed April 3, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §20-2-22 of the Code of West Virginia, 1931, as amended, relating to making a technical correction to an internal code reference related to bear tagging.
Be it enacted by the Legislature of West Virginia:

That §20-2-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22. Tagging, removing, transporting and reporting bear, bobcat, deer, wild boar and wild turkey.

(a) Each person killing a bear, bobcat, deer, wild boar or wild turkey found in a wild state shall either attach a completed game tag to the animal or remain with the animal and have upon his or her person a completed game tag before removing the carcass in any manner from where it was killed.

(b) While transporting the carcass of a bear, bobcat, deer, wild boar or wild turkey from where it was killed, each person shall either attach a completed game tag to the animal or have upon his or her person a completed game tag.

(c) Upon arriving at a residence, camp, hunting lodge, vehicle or vessel each person shall attach a game tag to the killed bear, bobcat, deer, wild boar or wild turkey. The game tag shall remain on the carcass until it is retagged by a conservation officer or an official checking station.

(d) If a person who does not possess a game tag kills a bear, bobcat, deer, wild boar or wild turkey, he or she shall make a tag. The tag shall bear the name, address and, if applicable, the license number of the hunter and the time, date and county of killing.

(e) The carcass of a wild turkey shall be delivered to a conservation officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.
(f) The fresh skin and head or carcass of the deer shall be delivered to a conservation officer or an official checking station for checking and retagging before it is transported beyond the boundaries of the county adjacent to that in which the kill was made.

(g) A person who kills a bear shall treat the carcass and remains in accordance with the provisions of section twenty-two-a of this article.

(h) For each violation of this section a person is subject to the penalties provided in this article.

CHAPTER 165

(Com. Sub. for S.B. 470 - By Senators Kessler, Chafin, Plymale and Stollings)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 11, 2009.]


Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ATV, UTV AND MOTORCYCLE RESPONSIBILITY ACT.

§20-15-1. Legislative findings.

The West Virginia Legislature finds that trail-oriented recreation for off-highway vehicle enthusiasts offered by the Hatfield-McCoy Regional Recreation Authority significantly contributes to the economy of West Virginia and is enjoyed by a large and growing number of residents and nonresidents alike. Since it is recognized that there are inherent risks in the operation of such off-highway vehicles which should be understood by each operator and which cannot be eliminated by the Hatfield-McCoy Regional Recreation Authority or its authorized outfitters or licensees, it is the purpose of this article to define the areas of responsibility and affirmative acts which authorized outfitters must perform or risk being liable for loss, damage or injury suffered by participants and to define the risk which the participants expressly assume and for which there can be no recovery.


The terms in this article have the following meaning, unless the context clearly requires a different meaning:

(1) “All-terrain vehicle” or “ATV” means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat
Ch. 165] NATURAL RESOURCES 1313

6 designed to be straddled by the operator and handlebars for
7 steering control and intended by the manufacturer to be used
8 by a single operator or by an operator and no more than one
9 passenger.

10 “Authorized outfitter” or “licensee” means a
11 commercial outfitter, which is a person, partnership, limited
12 liability company (“LLC”), corporation, other organization,
13 or any combination thereof, licensed by the Hatfield-McCoy
14 Regional Recreation Authority, who operates from any
15 temporary or permanent camp, private or public lodge, or
16 private home, who provides guided tours or the rental of all-
17 terrain vehicles, utility-terrain vehicles or motorcycles for use
18 on assigned lands for monetary profit or gain.

19 “Low-pressure tire” means every tire in which twenty
20 pounds per square inch or less of compressed air is designed
21 to support the load.

22 “Motorcycle” means any motor vehicle manufactured
23 with no more than two wheels and having a seat or saddle for
24 the use of the operator.

25 “Participant” means any person using the facilities of
26 the Hatfield-McCoy Regional Recreation Authority.

27 “Utility-terrain vehicle” or “UTV” means any motor
28 vehicle with four or more low-pressure tires designed for off-
29 highway use having bench or bucket seating for each
30 occupant and a steering wheel for control.


1 This article shall only apply to the Hatfield-McCoy
2 Regional Recreation Authority, authorized outfitters or
3 licensees and any participant as defined in section two of this
4 article.
§20-15-4. Duties of authorized outfitters or licensees.

1 (a) Every authorized outfitter or licensee shall:

2  (1) Mark for identification purposes all equipment and
3  vehicles used in the business;

4  (2) Maintain all equipment and vehicles used in the
5  business in such condition that the equipment and vehicles
6  are safe to operate or use as intended and recommended by
7  the manufacturer;

8  (3) Provide facilities, equipment and services conforming
9  to safety and other requirements established by the rules
10  promulgated by the Hatfield-McCoy Regional Recreation
11  Authority;

12  (4) Provide facilities, equipment and services as
13  advertised or as agreed to by the authorized outfitter or
14  licensee and the participant;

15  (5) Provide protective helmets which are size appropriate
16  and which meet the current performance specifications
17  established by the American National Standards Institute
18  standard, z 90.1, the United States Department of
19  Transportation federal motor vehicle safety standard no. 218
20  or Snell safety standards for protective headgear for vehicle
21  users as defined by subdivision (5), subsection (a), section
22  one, article one, chapter seventeen-f of this code, to all
23  persons using all-terrain vehicles, utility-terrain vehicles or
24  motorcycles;

25  (6) Provide all-terrain vehicles or motorcycles which are
26  age and size appropriate as recommended by the
27  manufacturer;

28  (7) Make reasonable and prudent efforts to ensure that
29  participants utilizing the facilities, equipment or services of
the authorized outfitter or licensee have received the safety training required by the provisions of the legislative rule for the use of the Hatfield-McCoy Regional Recreation Area;

(8) Make certain that every guide offered to participants by the authorized outfitter or licensee has a current standard first aid training certificate and CPR certificate issued by the American Red Cross or its equivalent and ATV safety training by the Hatfield-McCoy Recreation Authority or its designee;

(9) Make certain that employees carry first aid kits when acting as guides; and

(10) Make known to any participant utilizing the facilities, equipment or services of the authorized outfitter or licensee any dangerous condition as to trail lands, facilities or equipment to be traversed or used which is known by the outfitter or licensee.

(b) An authorized outfitter or licensee may not rent or lease an all-terrain vehicle, utility-terrain vehicle or motorcycle to a person under the age of eighteen years or allow any owner-operated all-terrain vehicle, utility-terrain vehicle or motorcycle on any guided tour when operated by any person under the age of eighteen years without first obtaining a written statement, signed by the minor’s parent or guardian certifying that:

(1) Any machine to be operated by the minor or his or her parent or guardian is of a model that is recommended by the manufacturer as appropriate to the minor’s age and size;

(2) All rules governing the use of the vehicle and the Hatfield-McCoy Recreation Area have been explained to the minor in sufficient detail to enable the minor to abide by the rules; and
(3) Any minor under the age of sixteen will remain under the supervision of and the sight of the parent or guardian at all times.

(c) An authorized outfitter or licensee may not rent or lease a utility-terrain vehicle to any person who is not at least sixteen years of age and in possession of a valid driver's license.

(d) An authorized outfitter or licensee shall provide a participant utilizing the facilities, equipment or services of the authorized outfitter or licensee with written notification of his or her duties as prescribed in section five of this article. The participant shall sign the notification prior to using the equipment. The signed notification, or an electronically stored copy thereof, shall be kept on file by the outfitter or licensee for not less than five years.

§20-15-5. Duties of participants.

(a) All participants:

(1) Shall comply with any requirements established by law, including those in section one, article one, chapter seventeen-f of this code which defines those acts prohibited by operators of all-terrain vehicles;

(2) Shall comply with the rules or regulations established for use of the Hatfield-McCoy Recreation Area;

(3) Shall, as to the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee, expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in operating an all-terrain vehicle, utility-terrain vehicle or motorcycle, and caused by any of the following:
(A) Variations in terrain, slope or angle of terrain;

(B) Surface or subsurface conditions including: Rocks, trees or other forms of forest growth or debris;

(C) Collisions with signs, markers, width restrictors, culverts, bridges, pipes, equipment, vehicles or any other objects or fixtures used in trail management, maintenance, construction or development;

(D) Collisions with signs, markers, pipes, equipment, vehicles or any component thereof used in natural resource maintenance, development or extraction;

(E) Collisions with electrical transmission poles, towers, lines, guy wires or any component thereof;

(4) Shall obey all rules or instructions announced by the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee, with regard to the operation of the all-terrain vehicle or motorcycle he or she is operating; and

(5) Shall wear all safety equipment provided by the authorized outfitter or licensee, or which might otherwise be required by law.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her own ability to negotiate any slope or trail;

(2) Operating the ATV, UTV or motorcycle within the limits of the participant’s own ability;

(3) Maintaining reasonable control of speed and course at all times;
(4) Heeding all posted warnings;

(5) Operating only on trails designated by the Hatfield-McCoy Regional Recreation Authority; and

(6) Refraining from acting in a manner which may cause or contribute to the injury of any person.

(c) If while riding an ATV, UTV or motorcycle any participant collides with any object or person, the responsibility for the collision shall be solely that of the participant or participants involved and not that of the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee unless the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee or their agent caused the collision in a tortious manner.

(d) After an accident, a participant may not leave the area where the accident took place without:

(1) Leaving personal identification, including his or her name and address;

(2) Notifying the proper authorities; and

(3) Obtaining assistance when he or she knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) Where a participant is a lawful passenger, that participant may not distract or perform any act which might interfere with the safe operation of the all-terrain vehicle, utility-terrain vehicle or motorcycle of which he or she is a passenger.

(f) Any person under the age of sixteen years shall remain under the direct supervision and within sight of a
parent or guardian both of whom must otherwise comply with state or federal laws and any rules or regulations promulgated thereunder.

(g) A participant may not make any alterations or tamper with the all-terrain vehicle, utility-terrain vehicle or motorcycle he or she is operating or of which he or she is a passenger in any way which would interfere with the continued safe operation of that machine.


(a) Any authorized outfitter or licensee is liable for injury, loss or damage caused by failure to follow the duties set forth in section four of this article where the violation of duty is causally related to the injury, loss or damage suffered.

(b) An authorized outfitter or licensee is not liable for any injury, loss or damage caused by the negligence of any person who is not an agent or employee of the authorized outfitter or licensee.

(c) An authorized outfitter or licensee is not liable for any injury, loss or damage caused by a participant's violation of any duty described in section five of this article.

(d) An authorized outfitter or licensee is not liable for any injury, loss or damage caused solely by the participant's failure to negotiate the terrain or environment over which or through which the participant is operating his or her all-terrain vehicle, utility-terrain vehicle or motorcycle as described in section five of this article.
AN ACT to amend and reenact §29-6-7 of the Code of West Virginia, 1931, as amended, relating to the qualifications of the Director of the Division of Personnel.

Be it enacted by the Legislature of West Virginia:

That §29-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

(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. 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 June 30, 2009. The director shall report annually on or before December 31, commencing in the year 2007, 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.
AN ACT to amend and reenact §62-12-6 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of probation officers; authorizing probation officers to arrest persons who violate conditions of probation or supervised release; eliminating the authority of probation officers to collect money; eliminating the requirement that probation officers post bond; and specifying the manner in which probation officers may exercise the power to arrest probationers and persons under their supervision.

Be it enacted by the Legislature of West Virginia:

That §62-12-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.


1 (a) Each probation officer shall investigate all cases which the court refers to the officer for investigation and shall report in writing on each case. The probation officer shall furnish to each person released on probation under the officer’s supervision a written statement of the probationer’s conditions of probation together with a copy of the rules
prescribed by the court for the supervision of probationers. The probation officer shall stay informed concerning the conduct and condition of each probationer under the officer’s supervision and shall report on the conduct and condition of each probationer in writing as often as the court requires. The probation officer shall use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition. The probation officer shall maintain detailed work records and shall perform any other duties the court requires. The probation officer has authority, with or without an order or warrant, to arrest any probationer as provided in section ten of this article, and to arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release so arrested shall be brought before the court for a prompt and summary hearing.

(b) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer’s official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction, which qualifications shall include the successful completion of handgun training, including a minimum of four hours’ training in handgun safety and comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

(3) Nothing in this subsection includes probation officers within the meaning of law-enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.
CHAPTER 168

(H.B. 2539 - By Delegates Morgan, Stephens, Argento, Cann and C. Miller)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-19, relating to professional licensing boards; authorizing the combining of administrative staff functions of boards; requiring consultation with the office of the Attorney General; requiring memorandum of understanding; and authorizing emergency rules and rulemaking.

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 §30-1-19, to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO STATE BOARDS.

§30-1-19. Combining board staff functions.

1 (a) Any board referred to in this chapter may combine administrative staff functions with any other board or boards referred to in this chapter, pursuant to the provisions of subsection (b) of this section, to carry out the administrative duties of the boards as set forth in this article, the practice
acts of each board set forth in this chapter and the legislative
rules of each board: Provided, That each board retains
responsibility for fulfilling its statutory duties.

(b) Before combining administrative staff functions
pursuant to subsection (a) of this section, the boards shall, in
consultation with the office of the Attorney General, enter
into a memorandum of understanding with the following
provisions:

(1) The names of the boards combining administrative
staff functions;

(2) The administrative staff functions being combined,
including the staff’s titles and duties relative to each board;

(3) The prorata share of expenses that each board will be
responsible for paying, including salaries, office rent, office
supplies, telephone, fax and computer services, travel
expenses and any other expenses anticipated by the boards;

(4) A description of how decisions will be made by the
boards, including employment of staff, the staff’s functions
and duties, and any other necessary decisions;

(5) A description of how modifications may be made to
the terms of the agreement; and

(6) Any other provisions necessary to set forth the
agreement of the boards.

(c) The boards that combine administrative staff
functions pursuant to this section, may promulgate rules in
accordance with the provisions of chapter twenty-nine-a of
this code, to make any necessary changes to facilitate the
combining of administrative staff functions. The boards may
also promulgate emergency rules pursuant to the provisions
of section fifteen, article three, chapter twenty-nine-a of this
code, to correct any conflicts with a board’s current rules.
AN ACT to amend and reenact §30-3-7 of the Code of West Virginia, 1931, as amended; relating to updating language and making technical changes clarifying that the Board of Medicine is an autonomous board which may hire its employees at the board’s will and pleasure, and providing for continuation of employment and coverage under the classified service of the Division of Personnel for current employees.

Be it enacted by the Legislature of West Virginia:

That §30-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-7. Powers and duties of West Virginia Board of Medicine.

(a) The board is autonomous and, in accordance with this article, shall determine qualifications of applicants for licenses to practice medicine and surgery, to practice podiatry, and to practice as a physician assistant for a physician licensed under this article, and shall issue licenses to qualified applicants and shall regulate the professional
conduct and discipline of such individuals. In carrying out its functions, the board may:

(1) Adopt such rules as are necessary to carry out the purposes of this article;

(2) Hold hearings and conduct investigations, subpoena witnesses and documents and administer oaths;

(3) Institute proceedings in the courts of this state to enforce its subpoenas for the production of witnesses and documents and its orders and to restrain and enjoin violations of this article and of any rules promulgated under it;

(4) Employ investigators, attorneys, hearing examiners, consultants and such other employees as may be necessary, who shall be exempt from the classified service of the Division of Personnel and who shall serve at the will and pleasure of the board. In addition, all personnel employed through the Department of Health and Human Resources on June 30, 2009, to provide services for the board are hereby transferred to the board effective July 1, 2009. However, the employment, salary, benefits or position classification of any person transferred under this section may not be reduced or diminished by reason of this section. All persons transferred shall retain their coverage under the classified service of the Division of Personnel and all matters relating to job classification, job tenure and conditions of employment shall remain in force and effect from and after the date of this section, to the same extent as if this section had not been reenacted. Also, nothing herein shall prohibit the disciplining or dismissal of any employee for cause.

(5) Enter into contracts and receive and disburse funds according to law;

(6) Establish and certify standards for the supervision and certification of physician assistants;
39 (7) Authorize medical and podiatry corporations in accordance with the limitations of section fifteen of this article to practice medicine and surgery or podiatry through duly licensed physicians or podiatrists; and

43 (8) Perform such other duties as are set forth in this article or otherwise provided for in this code.

45 (b) The board shall submit an annual report of its activities to the Legislature. The report shall include a statistical analysis of complaints received, charges investigated, charges dismissed after investigation, the grounds for each such dismissal and disciplinary proceedings and disposition.

---

CHAPTER 170

(Com. Sub. for S.B. 293 - By Senators Foster, Stollings, Jenkins, Bowman, Prezioso, Green, Plymale, Deem, Palumbo, Kessler, Guills, White and Williams)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended, relating to unauthorized practice of medicine and surgery or podiatry or as a physician assistant; criminal penalties; reducing the amount of fine for a person practicing on an expired, lapsed or terminated license for less than ninety days; and specifying as a felony the intentional unauthorized practice of medicine and surgery or podiatry or as a physician assistant in all other instances.
Be it enacted by the Legislature of West Virginia:

That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

(a) A person may not engage in the practice of medicine and surgery or podiatry, hold himself or herself out as qualified to practice medicine and surgery or podiatry or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state unless he or she is actually licensed under the provisions of this article. A person engaged in the practice of telemedicine is considered to be engaged in the practice of medicine within this state and is subject to the licensure requirements of this article. As used in this section, the term "practice of telemedicine" means the use of electronic information and communication technologies to provide health care when distance separates participants and includes one or both of the following: (1) The diagnosis of a patient within this state by a physician located outside this state as a result of the transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent; or (2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent. No person may practice as a physician assistant, hold himself or herself out as qualified to practice as a physician assistant or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice as a physician assistant in this state unless
29 he or she is actually licensed under the provisions of this article.

31 (b) Any person who intentionally practices, or holds himself or herself out as qualified to practice, or uses any title, word or abbreviation to indicate to or induce others to believe he or she is licensed to practice a health care profession licensed under this article with a license classified by the board as expired, lapsed or terminated, for any period of time up to ninety days, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail not more than twelve months, or both fined and confined.

41 (c) Any person who intentionally practices, or holds himself or herself out as qualified to practice, or uses any title, word or abbreviation to indicate to or induce others to believe he or she is licensed to practice as a physician, podiatrist or physician assistant without obtaining an active, valid West Virginia license to practice that profession or with a license that is: (1) Expired, terminated or lapsed, for over ninety days; or (2) inactive, revoked, suspended or surrendered, is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

53 (d) The provisions of this section do not apply to:

54 (1) Persons who are duly licensed health care providers under other pertinent provisions of this code and are acting within the scope of their license;

57 (2) Physicians or podiatrists licensed in other states or foreign countries who are acting in a consulting capacity with physicians or podiatrists duly licensed in this state for a period of not more than three months: Provided, That this exemption is applicable on a one-time only basis;
(3) An individual physician or podiatrist, or physician or podiatrist groups, or physicians or podiatrists at a tertiary care or university hospital outside this state and engaged in the practice of telemedicine who consult or render second opinions concerning diagnosis or treatment of patients within this state: (i) In an emergency or without compensation or expectation of compensation; or (ii) on an irregular or infrequent basis which occurs less than once a month or less than twelve times in a calendar year;

(4) Persons holding licenses granted by another state or foreign country who are commissioned medical officers of, a member of or employed by the armed forces of the United States, the United States Public Health Service, the Veterans' Administration of the United States, any federal institution or any other federal agency while engaged in the performance of their official duties;

(5) Any person providing first-aid care in emergency situations;

(6) The practice of the religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means;

(7) Visiting medical faculty engaged in teaching or research duties at a medical school or institution recognized by the board and who are in this state for periods of not more than six months: Provided, That the individuals do not otherwise engage in the practice of medicine or podiatry outside of the auspices of their sponsoring institutions;

(8) Persons enrolled in a school of medicine approved by the liaison committee on medical education or by the board, or persons enrolled in a school of podiatric medicine approved by the council of podiatry education or by the board, or persons enrolled in an undergraduate or graduate physician assistant program approved by the committee on allied health education and accreditation or its successor on
96 behalf of the American Medical Association or by the board, 
97 or persons engaged in graduate medical training in a program 
98 approved by the liaison committee on graduate medical 
99 education or the board, or engaged in graduate podiatric 
100 training in a program approved by the council on podiatric 
101 medical education or by the board, who are performing 
102 functions in the course of training including with respect to 
103 functions performed by medical residents or medical students 
104 under the supervision of a licensed physician, ordering and 
105 obtaining laboratory tests, medications and other patient 
106 orders by computer or other electronic means and no other 
107 provision of this code to the contrary may be construed to 
108 prohibit or limit medical residents' or medical students' use of 
109 computers or other electronic devices in this manner; 

(9) The fitting, recommending or sale of corrective shoes, 
arch supports or similar mechanical appliances in commercial 
establishments; and 

(10) The fitting or sale of a prosthetic or orthotic device 
not involving any surgical procedure, in accord with a 
prescription of a physician, osteopathic physician or where 
chiropractors or podiatrists are authorized by law to prescribe 
such a prosthetic or orthotic device, in accord with a 
prescription of a chiropractor or podiatrist, by a practitioner 
certified in the provision of custom orthotic and prosthetic 
devices, respectively, by a nationally recognized 
credentialing body for orthotics and prosthetics that is 
accredited by the National Commission for Certifying 
Agencies (NCCA): Provided, That the sale of any prosthetic 
or orthotic device by a partnership, proprietorship or 
corporation which employs such a practitioner or registered 
technician who fitted the prosthetic or orthotic device shall 
not constitute the unauthorized practice of medicine: 
Provided, however, That the practitioner or registered 
technician may, without a prescription, make 
recommendation solely to a physician or osteopathic 
physician or to a chiropractor or podiatrist otherwise
authorized by law to prescribe a particular prosthetic or orthotic device regarding any prosthetic or orthotic device to be used for a patient upon a request for such recommendation.

(e) This section may not be construed as being in any way a limitation upon the services of a physician assistant performed in accordance with the provisions of this article.

(f) Persons covered under this article may be permitted to utilize electronic signature or unique electronic identification to effectively sign materials, transmitted by computer or other electronic means, upon which signature is required for the purpose of authorized medical practice. Such signatures are deemed legal and valid for purposes related to the provision of medical services. This subsection does not confer any new practice privilege or right on any persons covered under this article.

CHAPTER 171

(Com. Sub. for H.B. 2839 - By Delegates Perdue, Boggs, Hatfield, Border, Moore, Moye and Rodighiero)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §30-3A-1 and §30-3A-2 of the Code of West Virginia, 1931, as amended, all relating to the management of pain by physicians; eliminating the definition of "intractable pain" and defining the word "pain"; making conforming amendments to the Management of Pain Act; and
expanding the definition of "pain-relieving controlled substance" in the Act.

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

That §30-3A-1 and §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3A. MANAGEMENT OF PAIN ACT.**

§30-3A-1. Definitions.
§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

§30-3A-1. Definitions.

1. For the purposes of this article, the words or terms defined in this section have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

2. (1) An "accepted guideline" is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. An accepted guideline also includes policy or position statements relating to pain management issued by any West Virginia board included in chapter thirty of the West Virginia Code with jurisdiction over various health care practitioners. Guidelines established primarily for purposes of coverage, payment or reimbursement do not qualify as accepted practice or care guidelines when offered to limit treatment options otherwise covered by the provisions of this article.

3. (2) "Board" or "licensing board" means the West Virginia Board of Medicine, the West Virginia Board of Osteopathy,
the West Virginia Board of Registered Nurses or the West Virginia Board of Pharmacy.

(3) "Nurse" means a registered nurse licensed in the State of West Virginia pursuant to the provisions of article seven of this chapter.

(4) "Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

(5) "Pain-relieving controlled substance" includes, but is not limited to, an opioid or other drug classified as a Schedule II through V controlled substance and recognized as effective for pain relief, and excludes any drug that has no accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision including, but not limited to, any drug classified as a Schedule I controlled substance.

(6) "Pharmacist" means a registered pharmacist licensed in the State of West Virginia pursuant to the provisions of article five of this chapter.

(7) "Physician" means a physician licensed in the State of West Virginia pursuant to the provisions of article three or article fourteen of this chapter.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

(a) A physician is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for prescribing, administering or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling pain if:
(1) In the case of a dying patient experiencing pain, the physician practices in accordance with an accepted guideline as defined in section one of this article and discharges his or her professional obligation to relieve the dying patient's pain and promote the dignity and autonomy of the dying patient; or

(2) In the case of a patient who is not dying and is experiencing pain, the physician discharges his or her professional obligation to relieve the patient's pain, if the physician can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(b) A registered nurse is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control pain, if administered in accordance with the orders of a licensed physician.

(c) A registered pharmacist is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed physician.

(d) For purposes of this section, the term "disciplinary sanctions" includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(e) The provisions of this section apply to the treatment of all patients for pain, regardless of the patient's prior or current chemical dependency or addiction. The board may
39 develop and issue policies or guidelines establishing
40 standards and procedures for the application of this article to
41 the care and treatment of persons who are chemically
42 dependent or addicted.

CHAPTER 172

(Com. Sub. for S.B. 526 - By Senators Foster,
Stollings and Laird)

[Passed April 7, 2009; in effect from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §30-14-1, §30-14-2, §30-14-4,
§30-14-5, §30-14-6 and §30-14-10 of the Code of West
Virginia, 1931, as amended, all relating to the regulation of
osteopathy; defining terms; revising requirements for post­
doctoral training as a requirement for licensure; providing for
educational permits for post-doctoral clinical training; authorizing the promulgation of an emergency legislative rule;
eliminating redundant language regarding licenses, internships,
formation of medical corporations and fees; and defining the
scope and duration of educational permits.

Be it enacted by the Legislature of West Virginia:

That §30-14-1, §30-14-2, §30-14-4, §30-14-5, §30-14-6 and
§30-14-10 of the Code of West Virginia, 1931, as amended, be
amended and reenacted, all to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.
§30-14-1. License required.

It is unlawful for any person to practice or offer to practice medicine and surgery as an osteopathic physician and surgeon in this state without a license or permit issued by the West Virginia Board of Osteopathy: Provided, That any license heretofore issued under the laws of this state, authorizing its holder to practice osteopathy and surgery, shall in no way be affected by the enactment of this article; except that the holder of every such license shall be subject to all of the provisions of this article respecting the requirements and obligations herein prescribed for the continuance in force of such license.

§30-14-2. Definitions.

For the purposes of this article:

(a) “Accredited osteopathic college” means a college of osteopathy and surgery which requires as a minimum prerequisite for admission preprofessional training of at least two years of academic work in specified scientific subjects, as prescribed by the board or by the college accrediting agency of the American Osteopathic Association, in an accredited college of arts and sciences and which requires for graduation a course of study approved by the board in accordance with the minimum standards established by the American Osteopathic Association;

(b) “Approved program of post-graduate clinical training” means a program of clinical training approved by, or subject of approval by, the American Osteopathic
§30-14-4. Application for license or educational permit.

(a) Each applicant for examination by the board, with the exception of assistants to osteopathic physicians and surgeons, as hereinafter provided, shall submit an application therefor on forms prepared and furnished by the board.
5 (b) Each applicant for a license shall furnish evidence, verified by oath and satisfactory to the board, establishing that the applicant has satisfied the following requirements:

8 (1) The applicant is eighteen years of age or over;

9 (2) The applicant is of good moral character;

10 (3) The applicant has graduated from an accredited osteopathic college;

12 (4) The applicant has successfully completed either of the following:

14 (A) A minimum of one year of post-doctoral, clinical training in a program approved by the American Osteopathic Association; or

17 (B) A minimum of one year of post-doctoral, clinical training in a program approved by the Accreditation Council for Graduate Medical Education and forty hours of continuing medical education in osteopathic manipulative medicine and osteopathic manipulative treatment in courses approved, and classified as Category 1A, by the American Osteopathic Association.

24 (c) Each applicant for an educational permit shall furnish evidence, verified by oath and satisfactory to the board, establishing that the applicant has satisfied the following requirements:

28 (1) The applicant is eighteen years of age or over;

29 (2) The applicant is of good moral character;

30 (3) The applicant has graduated from an accredited osteopathic college; and
(4) The applicant is under contract as an intern or resident in an approved program of post-graduate clinical training.

d) The board may not issue a license or permit to any person until the applicant has paid the application fee established by legislative rule of the board.

e) In order to give timely effect to the amendments to this section and section ten of this article, the board is authorized to propose a legislative rule consistent with these amendments as an emergency rule under the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

§30-14-5. Examination.

In order to receive a license to practice osteopathic medicine and surgery, an applicant must satisfactorily complete a standard, national examination, specified through legislative rule of the board or an examination administered by the licensing authority of another state and approved by the board as equivalent to the national examination or to the former West Virginia state examination.

The examination for a license to practice medicine and surgery as an osteopathic physician and surgeon shall cover substantive and clinical knowledge in all the essential branches of medicine and surgery including anatomy, physiology, chemistry, pharmacology, pathology, public health--preventive medicine, surgery, obstetrics and gynecology, osteopathic medicine, materia medica principles and practice of osteopathy. The list of subjects may be expanded or regrouped at the discretion of the board.

§30-14-6. Issuance of license without examination; fee.

The board may at its discretion issue a license without examination to an applicant who has been licensed by the
national board of examiners for osteopathic physicians and
surgeons, and to an applicant who has been licensed by
examination in any country, state, territory, province or the
District of Columbia, provided the requirements for licensure
in the country, state, territory, province or the District of
Columbia in which the applicant is licensed are deemed by
the board to have been equivalent to requirements for
licensure in this state at the date such license was issued. The
board may also at its discretion issue a license without
examination to an osteopathic physician and surgeon who is
a graduate of an accredited osteopathic college and who has
passed the examination for admission into the medical corps
of any of the armed services of the United States or the
United States public health service. But no license shall be
issued under the provisions of this section until the person
applying therefore shall have paid to the board a reasonable
fee, the amount of such reasonable fee to be set by the board
rules, and any other fees applicable to investigation.

§30-14-10. Renewal of license; fee; refresher training a
prerequisite; effect of failure to renew; reinstatement; educational permit.

(a) All holders of licenses to practice as osteopathic
physicians and surgeons in this state shall renew the licenses
biennially on or before July 1, by the payment of a renewal
fee, to the board. The board shall notify each licensee of the
necessity of renewing his or her license at least thirty days
prior to the expiration of the license.

(b) As a prerequisite to renewal of a license issued by the
board, each licensee shall furnish biennially to the board
satisfactory evidence of having completed thirty-two hours
of educational refresher course training, of which the total
amount of hours must be approved by the American
Osteopathic Association, and fifty percent of the required
thirty-two hours shall be classified as category (1).
(c) The failure to renew a license shall operate as an automatic suspension of the rights and privileges granted by its issuance. The board may propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, providing that an osteopathic physician may renew a license on an inactive basis.

(d) A license suspended by a failure to make a biennial renewal thereof may be reinstated by the board upon compliance of the licensee with the following requirements:

1. Presentation to the board of satisfactory evidence of educational refresher training of quantity and standard approved by the board for the previous two years;

2. Payment of all fees for the previous two years that would have been paid had the suspended licensee maintained his or her license in good standing; and

3. Payment to the board of a reinstatement fee specified by legislative rule of the board.

(e) An educational permit authorizes the holder to practice osteopathic medicine and surgery only for work performed within an approved program of post-graduate clinical training under the supervision of a duly licensed osteopathic or allopathic physician. The first educational permit issued to a graduate of an accredited osteopathic college may be valid for a period of fifteen months and subsequent educational permits issued to the same person may be valid for not more than twelve months. An educational permit shall expire upon the termination of the permit holder from an approved program of post-graduate clinical training and may also be suspended or revoked by the board at any time upon grounds defined by the board by legislative rule.
AN ACT to amend and reenact §30-19-1, §30-19-2, §30-19-3, §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10 and §30-19-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §30-19-12, §30-19-13, §30-19-14, §30-19-15, §30-19-16 and §30-19-17, all relating to State Board of Registration of Foresters; prohibiting the use of the titles registered forester and registered forestry technician; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule making authority; continuing a special revenue account; establishing certificate and permit requirements; providing for licensure for persons licensed in another state; establishing renewal requirements; requiring display of license; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. FORESTERS.

§30-19-1. Use of descriptive title restricted.
(a) No person may use in connection with his or her name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is a registered forester or registered forestry technician unless he or she is certified in accordance with this article.

(b) Nothing contained in this article shall be construed as preventing any person, firm, partnership or corporation from practicing forestry, managing woodlands or forests, removing any products or planting trees on any land, in any manner desired.

Ch. 173] PROFESSIONS AND OCCUPATIONS 1347

The practice of forestry and the State Board of Registration of Foresters are subject to article one of this chapter, this article, and any rules promulgated hereunder.


As used in this article, the following words and terms have the following meanings:

(a) “Board” means the State Board of Registration of Foresters.

(b) “Certificate” means a certificate issued to practice as a registered forester or registered forestry technician.

(c) “Certification” means a certificate issued under the provisions of this article.

(d) “Certified” means a person holding a certification issued under the provisions of this article.

(e) “Forester” means a person who has acquired specialized forestry training by reason of his or her knowledge of the natural sciences, mathematics, silviculture, forest protection, forest management, forest economics and forest utilization, acquired by professional forestry education and practical experience.

(f) “Forester-in-training” or “Forestry technician-in-training” means a person who possesses the necessary educational qualifications as prescribed in this article for certification, but who has not completed the experience requirements in the field of forestry as required for certification.

(g) “Forestry” means the professional practice embracing the science, business, and the art of creating, conserving and
managing forests and forestlands for the sustained use and enjoyment of their resources, material or other forest produce.

(h) “Practice of forestry” means professional forestry services, including the consultation, investigation, evaluation, planning or responsible supervision of any forestry activities when such professional service requires the application of forestry principles and techniques.

(i) “Permit” means a document issued as evidence of qualification to practice as a forester-in-training or forestry technician-in-training under this article.

(j) “Permittee” means a person holding a permit issued under the provisions of this article.

(k) “Registered Forester” means a forester certified under this article.

(l) “Registered Forestry Technician” means a forestry technician certified under this article.

§30-19-4. State Board of Registration of Foresters.

(a) The State Board of Registration of Foresters is continued. The members of the board in office on July 1, 2009, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) To be effective on July 1, 2009, the Governor shall appoint, by and with the advise and consent of the Senate, a registered forestry technician to replace the board member whose term ends on June 30, 2009.

(c) Commencing July 1, 2009, the board shall consist of the following five members:
(1) Four registered foresters; and

(2) One registered forestry technician.

d) Each member shall be appointed by the Governor, by and with the consent of the Senate, from five nominees recommended by the West Virginia Division of the Society of American Foresters. The term is for five years.

e) A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and qualified.

f) Each member of the board shall be a resident of West Virginia during the appointment term.

(g) Each member must have been certified in this state for a period of not less than three years prior to his or her appointment and must have engaged in the practice of forestry for at least ten years.

(h) Each member shall maintain an active certification with the board.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A member of the board immediately and automatically forfeits membership to the board if his or her certification has been suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.
(k) The board shall elect annually one of its members as chairperson and one member as secretary who shall serve at the will and pleasure of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members serving on the board constitutes a quorum.

(n) The board shall hold at least two meetings annually. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at such time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-19-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for a certification or permit;

(3) Establish procedures for submitting, approving and rejecting applications for a certification or permit;
(4) Determine the qualifications of any applicant for a certification or permit;

(5) Prepare, conduct, administer and grade written, oral or written and oral examinations for a certificate;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(8) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce this article;

(9) Investigate alleged violations of this article, legislative rules, orders and final decisions of the board;

(10) Conduct disciplinary hearings of persons regulated by the board;

(11) Determine disciplinary action and issue orders;

(12) Institute appropriate legal action for the enforcement of this article;

(13) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(14) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(15) Establish, by legislative rule, the continuing education requirements for certificate holders and permittees;
36 (16) Propose rules in accordance with article three, chapter twenty-nine-a of this code to implement this article.

38 (c) The board may:

39 (1) Contract with third parties to administer the examinations required under this article;

41 (2) Define, by legislative rule, the fees charged under this article;

43 (3) Issue, renew, deny, suspend, revoke or reinstate a certification or permit;

45 (4) Sue and be sued in its official name as an agency of this state;

47 (5) Confer with the Attorney General or his or her assistant in connection with legal matters and questions; and

49 (6) Take all other actions proper to effectuate the purposes of this article.


1 (a) The board shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, to implement this article, including:

4 (1) Standards and requirements for a certification and permit;

6 (2) Procedures for examinations and reexaminations;

7 (3) Requirements for third parties to prepare and/or administer examinations and reexaminations;
(4) Educational and experience requirements, and the passing grade on the examination;

(5) Standards for ethical conduct;

(6) Procedures for the issuance and renewal of a certification and permit;

(7) A fee schedule;

(8) Continuing education requirements for a certificate holder and permittee;

(9) Procedures for denying, suspending, revoking, reinstating or limiting the practice of a certificate holder or permittee;

(10) Requirements for inactive or revoked certificate and permit; and

(11) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board’s rules in effect on the effective date of this article shall remain in effect until amended or repealed, and references to former enactments of this act are interpreted to mean this article.

§30-19-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the “Board of Foresters Fund”, which fund is continued. The fund shall be used by the board for the administration of this article. Except as provided in article one of this chapter, the board shall retain the amounts in the special revenue account
§30-19-8. General requirements to be certified as a registered forester.

(a) To be eligible to be certified as a registered forester, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Have obtained either:

(A) Completion of a four-year degree program or masters degree program in professional forestry, accredited by the Society of American Foresters and have two years related experience in the field of forestry; or

(B) Completion of a two-year technical forestry program in a program accredited or recognized by the Society of American Foresters, completion of a bachelor’s degree in a field used in the practice of forestry as approved by the board and four years related experience in the field of forestry;

(4) Successfully pass an examination approved by the board.

(b) Those persons licensed by the board as a forester as of the effective date of this section are not required to take the examination.
§30-19-9. **General requirements to be registered forestry technician.**

1. To be eligible to be certified as a registered forestry technician, the applicant must:

2. (1) Be of good moral character;

3. (2) Have a high school diploma or its equivalent;

4. (3) Graduate from a two-year technical forestry program accredited or recognized by the Society of American Foresters;

5. (4) Complete four years of related experience in the field of forestry.

§30-19-10. **Qualifications for permit as a forester-in-training or a forestry technician-in-training.**

1. (a) The board may issue a permit to practice as a forester-in-training or a forestry technician-in-training to an applicant who meets all the requirements for certification, except the experience requirements of paragraph (A) or (B), subdivision three, subsection (a), section eight or subdivision four, section nine.

2. (b) A permit to practice as a forester-in-training or forestry technician-in-training may be renewed annually for a period not to exceed five years. The board may extend the five year limitation if the board finds the applicant experienced an undue hardship which prevented the attainment of the required experience.

§30-19-11. **License from another state.**
The board may issue a certification to a person as a registered forester in this state, without requiring an examination, to an applicant from another jurisdiction who:

1. Is not a resident of this state;

2. Is of good moral character;

3. Holds a valid forestry license or other authorization to practice forestry in another jurisdiction which meets requirements that are substantially equivalent to the certification requirements set forth in this article;

4. Is not currently being investigated by a disciplinary authority of this state or another jurisdiction, does not have charges pending against his or her authorization, and has never had his or her authorization revoked;

5. Has not previously failed an examination for certification in this state;

6. Has paid all the applicable fees; and

7. Has completed such other action as required by the board.

§30-19-12. Renewal requirements.

(a) All persons regulated under the provisions of this article shall annually before January 1, renew his or her certification or permit by completing a form prescribed by the board and submit any other information required by the board.

(b) At least thirty days prior to July 1 of each year, the board shall mail to every person regulated under the provisions of this article an application for renewal.
(c) The board shall charge a fee for each renewal of a certification or permit and may charge a late fee for any renewal not paid in a timely manner.

(d) The board shall require as a condition for the renewal of a certification or permit that each person regulated under the provisions of this article complete continuing education.

(e) The board may deny an application for renewal for any reason which would justify the denial of an original application for a certification or permit.

§30-19-13. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the certificate holder or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the certification or permit or the imposition of sanctions against the certificate holder or permittee.
permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the certification or permit of, impose probationary conditions upon or take disciplinary action against, any certificate holder or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a certification or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

(4) Violating this article or lawful order or rule of the board;

(5) Having had a certificate or permit revoked or suspended, other disciplinary action taken, or an application for certification or permit or other authorization refused, revoked or suspended by the proper authorities of another jurisdiction; or
(6) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the certificate holder or permittee to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.


(a) Hearings shall be governed by section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and
conclusions of law. The proposed order may contain
proposed disciplinary actions if the board so directs. The
board may accept, reject or modify the decision of the
administrative law judge.

(d) Any member or the executive director of the board
has the authority to administer oaths, examine any person
under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the certificate
holder or permittee has violated this article or the board’s
rules, a formal written decision shall be prepared which
contains findings of fact, conclusions of law and a specific
description of the disciplinary actions imposed.

§30-19-15. Judicial review; appeal to Supreme Court of
Appeals.

Any certificate holder or permittee adversely affected by
a decision of the board entered after a hearing may obtain
judicial review of the decision in accordance with section
four, article five, chapter twenty-nine-a of this code, and may
appeal any ruling resulting from judicial review in
accordance with article six, chapter twenty-nine-a of this
code.

§30-19-16. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article
or otherwise, the board has reason to believe that a certificate
holder or permittee has committed a criminal offense under
this article, the board may bring the information to the
attention of an appropriate law-enforcement official.

(b) Effective July 15, 2009, a person violating a provision
of this article is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than $500 nor more

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.
That §30-23-4, §30-23-5, §30-23-6, §30-23-9, §30-23-10, §30-23-13, §30-23-14, §30-23-16, §30-23-17 and §30-23-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-4. Definitions.

§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.

§30-23-6. Powers and duties of the board.

§30-23-9. Requirements of Radiological Technology license.

§30-23-10. Scope of Practice for a Radiological Technologist.

§30-23-13. Requirements for temporary Medical Imaging and Radiation Therapy Technology license.

§30-23-14. Medical Imaging and Radiation Therapy technology license from another state; license to practice in this state.


§30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.


§30-23-4. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “ASPMA” means the American Society of Podiatric Medical Assistants.

(b) “ARMRIT” means the American Registry of Magnetic Resonance Imaging Technologists.

(c) “ARRT” means the American Registry of Radiologic Technologist.

(d) “Board” means the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

(e) “Business entity” means any firm, partnership, association, company, corporation, limited partnership,
limited liability company or other entity providing medical imaging or radiation therapy technology.

(f) “Dental X-rays” means X-rays taken of the oral cavity with x-ray units designed for this specific performance.

(g) “JRCERT” means the Joint Review Committee on Education in Radiologic Technology.

(h) “JRCNMT” means the Joint Review Committee on Education Programs in Nuclear Medicine Technology.

(i) “License” means a medical imaging and radiation therapy technology license issued under the provisions of this article.

(j) “Licensed practitioner” means a person licensed in West Virginia to practice medicine, chiropractic, podiatry, osteopathy or dentistry.

(k) “Licensee” means a person holding a license issued under the provisions of this article.

(l) “Magnetic Resonance Imaging or MRI” means the performance of medical imaging using radio waves, magnetic fields and a computer to produce images of the body tissues.

(m) “Medical Imaging” means the use of ionizing radiation, electromagnetic radiation, or radioactivity for evaluation of body tissue in order to diagnose injury and disease by means of image production.

(n) “NMTCB” means the Nuclear Medicine Technology Certification Board.

(o) “Nuclear Medicine Technologist” means a person holding a nuclear medicine license issued under the provisions of this article.
“Nuclear Medicine Technology” means the compounding, calibrating, dispensing and administrating of radio-pharmaceuticals, pharmaceuticals and radio-nuclides under the direction of an individual listed as an authorized user by the U.S. Nuclear Regulatory Commission for the production of images for diagnosis and/or treatment of various disorders.

“Permittee” means any person holding a podiatric medical assistant permit issued pursuant to the provisions of this article.

“PET/CT Technologist” means an individual recognized by the board as qualified to operate a PET/CT scanner.

“PET/CT Technology” means the operation of a Positron Emission Tomography/Computerized Tomography scanner to view internal images of the body.

“Podiatric medical assistant” means a person who has been issued a permit under the provisions of this article, to perform podiatric radiographs.

“Podiatric radiographs” means radiographs confined to the foot and ankle performed on dedicated podiatric X-ray equipment.

“Practice of Medical Imaging and Radiation Therapy Technology” means the practice of Radiologic Technology, Radiation Therapy, Nuclear Medicine Technology and Magnetic Resonance Imaging Technology.

“Radiologic technologist” means a person, other than a licensed practitioner, who applies medical imaging or assists in the application of ionizing radiation to human beings for diagnostic or therapeutic purposes as prescribed by a licensed practitioner.
(x) “Radiologic technology” means the application of ionizing radiation or assisting in the application of medical imaging to human beings for diagnostic or therapeutic purposes as prescribed by a licensed practitioner.

(y) “Radiologist” means a licensed practitioner who has successfully completed a residency in the field of Radiology and specializes in the use of medical imaging for the diagnosis or treatment of disease.

(z) “Radiologist Assistant or RA” means an individual who is licensed under the rules of the West Virginia Board of Medicine and has completed specialized training from an accredited program in the profession and passed a written examination as recognized by the West Virginia Board of Medicine.

(aa) “Radiology resident” means a licensed practitioner who is in training to become a Radiologist and who uses medical imaging in the diagnosis or treatment of disease, under the supervision of a Radiologist.

(bb) “Supervision” means responsibility for and control of quality, safety and technical aspects in the application of medical imaging technology on human beings for diagnostic or therapeutic purposes.

(cc) “Technology” means Medical Imaging Technology or Radiation Therapy Technology.

§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.

(a) The West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners is continued. The members of the board in office, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.
(b) The board shall consist of the following eleven members, appointed by the Governor by and with the advice and consent of the Senate:

1. One Radiologic Health Specialist from the Radiation, Toxics and Indoor Air Division of the West Virginia Department of Health and Human Resources;

2. Three licensed practitioners, two of whom shall be Radiologists;

3. Three licensed Radiologic Technologists, one of whom shall be an active medical imaging educator;

4. One licensed Nuclear Medicine Technologist;

5. One licensed Magnetic Resonance Imaging Technologist; and

6. Two citizen members, who are not licensed under the provisions of this article and do not perform any services related to the practice licensed under the provisions of this article.

(c) Each member shall be appointed for a term of three years and may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member continues to serve until a successor has been appointed and has qualified. The terms shall be staggered in accordance with the initial appointments under prior enactments of this article.

(d) Each member of the board shall be a resident of West Virginia during the appointment term.
(e) The Radiologic Technologists, Nuclear Medicine Technologists and the Magnetic Resonance Imaging Technologists serving on the board shall maintain an active license with the board.

(f) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(g) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(h) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice has been suspended or revoked. A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(i) The board shall designate one of its members as chairperson and one member as secretary who shall serve at the will of the board.

(j) Each member of the board shall receive compensation and expense reimbursement in accordance with article one of this chapter.

(k) A majority of the members serving on the board shall constitute a quorum.

(l) The board shall hold at least two annual meetings. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at such time and place as designated in the call or request.
(m) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this State.

§30-23-6. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter, and elsewhere in law.

(b) The board shall:

1. Hold meetings, conduct hearings and administer examinations;
2. Establish requirements for a license, apprentice license and permit;
3. Establish procedures for submitting, approving and rejecting applications for a license, apprentice license and permit;
4. Determine the qualifications of any applicant for a license, permit, certificate and registration;
5. Provide standards for approved schools of Medical Imaging and Radiation Therapy Technology, procedures for obtaining and maintaining approval, and procedures of revocation of approval where standards are not maintained: Provided, That the standards for approved schools meet at least the minimal requirements of the American Registry of Radiologic Technologist JRCERT, JRCNMT or standards determined programmatically equivalent by the board;
6. Work with the West Virginia Board of Medicine to determine the scope of practice, the required education and...
training, and the type of regulations necessary for Radiologist;

(7) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license, certificate and registration;

(8) Determine the passing grade for the examinations;

(9) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(10) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article;

(11) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(12) Conduct disciplinary hearings of persons regulated by the board;

(13) Determine disciplinary action and issue orders;

(14) Institute appropriate legal action for the enforcement of the provisions of this article;

(15) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(16) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;
50 (17) Establish, by legislative rule, the continuing education requirements for licensees, permittees, certificate holders and registrants; and

53 (18) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

56 (c) The board may:

57 (1) Contract with third parties to administer the examinations required under the provisions of this article;

59 (2) Define, by legislative rule, the fees charged under the provisions of this article;

61 (3) Issue, renew, deny, suspend, revoke or reinstate a license, permit, certificate and registration;

63 (4) Sue and be sued in its official name as an agency of this state;

65 (5) Confer with the Attorney General or his or her assistant in connection with legal matters and questions; and

67 (6) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-23-9. Requirements for Radiologic Technology license.

1 (a) To be eligible for a license to practice Radiologic Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;
(3) Have successfully completed an accredited program in Radiologic technology, as determined by an accreditation body recognized by the board, from a school of Radiologic Technology that has been approved by the board;

(4) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of Radiologic Technology, skills and techniques; and

(5) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed; and

(6) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed.

(b) A person seeking a Radiologic Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Radiologic Technology license issued by the board prior to July 1, 2009, shall for all purposes be considered a license issued under this article.

§30-23-10. Scope of Practice for a Radiologic Technologist.

The scope of practice of a Radiologic Technologist includes the following:

(1) Analysis and correlation of procedure requests and clinical information provided by a physician or patient, or
both, for preprocedure determination of the appropriate exam, its extent, and its scope;

(2) Evaluation of the physical, mental and emotional status of the patient with respect to the ability to understand the risk versus benefit of the procedure and to undergo the procedure requested;

(3) Selection, preparation, and operation of medical imaging equipment and accessories to perform procedures;

(4) Positioning patient to best demonstrate anatomy of interest, while respecting patient's physical limitations and comfort;

(5) Determination of imaging exposure factors, setting of factors on control panel, and application of medical imaging exposures;

(6) Application of radiation protection principles to minimize radiation exposure to patient, self, and others;

(7) Evaluation of images for technical quality;

(8) Performance of noninterpretive fluoroscopic procedures according to institutional policy;

(9) Oversight of image processing standards and the appropriate labeling of images;

(10) Administering contrast media after consultation with, and under the supervision of, a physician who is immediately and physically available;

(11) Maintaining values congruent with the profession’s Code of Ethics and scope of practice as well as adhering to national, institutional and/or departmental standards, policies
and procedures regarding delivery of services and patient care; and

(12) Performing any other duties that the board authorizes for a Radiologic Technologist.

§30-23-13. Requirements for temporary Medical Imaging and Radiation Therapy Technology license.

(a) The board may issue a temporary Medical Imaging and Radiation Therapy Technology license to engage in the practice of Medical Imaging and Radiation Therapy Technology in this state to an applicant who meets the qualifications for a Medical Imaging and Radiation Therapy Technology license, but has not passed the examination.

(b) Temporary licenses expire as provided by rule.

§30-23-14. Medical Imaging and Radiation Therapy Technology license from another state; license to practice in this state.

The board may issue a license to practice Medical Imaging and Radiation Therapy Technology in this state, without requiring an examination, to an applicant from another jurisdiction who:

(1) Is not a resident of this state;

(2) Is of good moral character:

(3) Holds a valid Medical Imaging and Radiation Therapy Technology license, certificate or other authorization, including the American Registry of Radiologic Technologists, or Nuclear Medicine Technology Certification Board or equivalent to practice Medical Imaging and Radiation Therapy Technology in another jurisdiction and
meets requirements which are substantially equivalent to the Medical Imaging and Radiation Therapy Technology licensure requirements set forth in this article;

(4) Is not currently being investigated by a disciplinary authority of this state or another jurisdiction, does not have charges pending against his or her license or other authorization to practice Medical Imaging and Radiation Therapy Technology, and has never had a license or other authorization to practice Medical Imaging and Radiation Therapy Technology revoked;

(5) Has not previously failed an examination for licensure in this state;

(6) Has paid all the applicable fees; and

(7) Has completed other action as required by the board.


The scope of practice for Nuclear Medicine Technology includes the following:

(1) The practice of diagnostic in-vivo procedures and in-vitro procedures which include:

(A) Analysis and correlation of procedure request and clinical information provided by the referring physician or patient, or both, for determination of appropriate exam, extent, and scope;

(B) Evaluation of the physical and emotional status of the patient with respect to the ability to undergo the procedure requested;

(C) Immediate predose review of patient's identification, prescribed dose quantity and route of administration, and
14 identification of the test agent designed to prevent dose
15 mis-administration;

16 (D) Preparation of the appropriate radiopharmaceutical
17 with measurement of dose activity;

18 (E) Administration of appropriate diagnostic dose levels
19 of radiopharmaceuticals;

20 (F) Administration of nonradioactive pharmaceuticals
21 utilized in conjunction with a nuclear medicine imaging or
22 in-vivo procedure, for example, cholecystokinin, furosemide,
23 vitamin B12, in accordance with hospital or facility
24 procedures, excluding narcotic and sedating medication;

25 (G) Selection of appropriate imaging or test parameters,
26 or both;

27 (H) Obtaining images according to established protocols
28 and any special views to optimize information as appropriate;

29 (I) Placement of patient in proper position using
30 supportive materials and immobilizer as necessary;

31 (J) Assuring appropriate image labeling as to patient;

32 (K) Monitoring of patient and equipment during
33 procedure for determination and application of any corrective
34 actions necessary;

35 (L) Monitoring of data collection and processing and
36 performance of technical analysis of test results;

37 (M) Preparation and performance of laboratory in-vivo
38 nuclear medicine procedures, inclusive of the selection and
39 operation of laboratory counting equipment, performance of
40 calculations and data processing necessary for completion of
lab procedures and the submission of results to the physician or licensee;

(N) Oversight and application of image development; and

(O) Performance of in-vitro testing of serum, plasma, or other body fluids using radio immunoassay, or similar ligand assay methods.

(2) The practice for handling radiopharmaceuticals which includes:

(A) Preparation, by means of tagging, compounding, etc., in accordance with manufacturer's specifications;

(B) Measurement and calculation of activity of radionuclides with a dose calibrator;

(C) Application of radioactive decay calculations to determine required volume or unit form necessary to deliver the prescribed radioactive dose; and

(D) Recording of radiopharmaceutical information on a patient's permanent record.

(3) The practice for radionuclide therapy which includes:

(A) Assisting licensee in the preparation and applications of therapeutic radionuclides;

(B) Oversight of radiation safety practices related to the handling and administration of radiopharmaceuticals for therapy of patients;

(C) Maintenance of records of radioactive material receipt, use, storage, and disposal in accordance with regulatory requirements;
(D) Oversight and enforcement of radiation safety policies, practices, and regulations regarding the possession and use of radioactive materials;

(E) Performance of radiation safety procedures such as radiation survey and wipe testing of incoming radioactive shipments and facility fixtures;

(F) Maintaining values congruent with the profession’s code of ethics and scope of practice as well as adhering to national, institutional and/or departmental standards, policies and procedures regarding delivery of services and patient care; and

(G) Performing any other duties that the board determines may be performed by a Nuclear Medicine Technologist.

(4) The scope of practice for a Nuclear Medicine Technologist or certified PET Technologist to operate a multimodality device, i.e. PET/CT, SPECT/CT etc, requires that:

(A) A Nuclear Medicine Technologist, (ARRT(N) or NMTCB) or certified PET Technologist may administer radiopharmaceuticals and/or ionizing radiation from an integrated multimodality device, if the ionizing radiation is produced for the sole purpose of attenuation correction and considered an essential component of the procedure, provided the licensee has obtained proper documented training that has been approved by the board in the radiation safety aspect of the operation of these units; and

(B) A licensed radiographer, (ARRT(R)), or Nuclear Medicine Technologist with an additional certification by the ARRT or other nationally recognized certifying body in computed tomography, shall operate the computed tomography scanner if it is used for any other diagnostic radiographic procedures.
§30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.

1 (a) To be eligible for a license to practice Magnetic Resonance Imaging Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed;

6 (4) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed.

7 (5) Meet one of the following qualifications:

8 (A) Have a baccalaureate or associate degree in one of the physical or biological sciences pertaining to the Medical Imaging or Radiation Therapy profession;

9 (B) Have a baccalaureate or associate degree in other disciplines of Medical Imaging with successful completion of courses in the following areas: college algebra, physics or chemistry, human anatomy, physiology, and radiation safety;

10 (C) National certification as a certified Nuclear Medicine Technologist (CNMT);

11 (D) National certification as a Registered Radiographer (ARRT (R));
(E) National certification as a Registered Radiographer specializing in Nuclear Medicine (ARRT (N));

(F) National certification as a Radiation Therapist (ARRT(T)); or

(G) National certification as an MRI technologist (ARRT (MR) or ARMRIT); and

(6) Pass an examination which has been approved by the board, with a minimum passing score of seventy-five percent, which examination shall cover the basic subject matter of Medical Imaging, radiation safety, skills and techniques as it pertains to Magnetic Resonance Imaging.

(b) A person seeking a Magnetic Resonance Imaging Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Magnetic Resonance Imaging Technology license issued by the board prior to July 1, 2007, shall for all purposes be considered a license issued under this article: Provided, That a person holding a Magnetic Resonance Imaging Technology license issued prior to July 1, 2007, must renew the license pursuant to the provisions of this article.


(a) The board may issue an apprentice license to an individual who is practicing as a Nuclear Medicine Technologist or a Magnetic Resonance Imaging Technologist
prior to July 1, 2007 but has not obtained certification in the discipline. A notarized letter, signed by the individual’s supervising licensed physician, must be submitted with the individual’s application, stating that the individual has performed the duties of a Nuclear Medicine Technologist or Magnetic Resonance Imaging Technologist prior to July 1, 2007.

(b) The apprentice license is valid for one year. An apprentice license may be renewed annually for an additional four years, giving the individual a total of five years to complete the requirements and successfully pass the certification examination for a Nuclear Medicine Technologist license or a Magnetic Resonance Imaging Technologist license. All individuals possessing an apprentice license must work under the supervision of a licensed practitioner for MRI, an authorized user for nuclear medicine or a technologist who is licensed in that discipline.

(c) Any individual possessing a valid Medical Imaging license issued by the board and seeks to cross-train in the discipline of Nuclear Medicine Technology or Magnetic Resonance Imaging Technology, may obtain an apprentice license in that discipline for the purpose of obtaining the necessary clinical experience requirements in order to qualify to sit for the required examination. This apprentice license will be valid for one year and renewable for four year, giving a cross-trained individual five years to obtain certification in the discipline.
CHAPTER 175

(Com. Sub. for H.B. 2531 - By Delegates Morgan, Stephens and Argento)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to repeal §16-14-1, §16-14-2 and §16-14-3 of the Code of West Virginia, 1931, as amended; to repeal §30-27-10a of said code; to amend and reenact §30-27-1, §30-27-2, §30-27-3, §30-27-4, §30-27-5, §30-27-6, §30-27-7, §30-27-8, §30-27-9, §30-27-10, §30-27-11, §30-27-12, §30-27-13, §30-27-14, §30-27-15, §30-27-16, §30-27-17 and §30-27-18; and to amend said code by adding thereto six new sections, designated §30-27-19, §30-27-20, §30-27-21, §30-27-22, §30-27-23 and §30-27-24, all relating to the Board of Barbers and Cosmetologists; prohibiting the practice of barbering, permanent waving, cosmetology, aesthetics, or nail care without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rulemaking authority; continuing a special revenue account; establishing license requirements; providing for licensure for persons licensed in another state; establishing renewal requirements; providing permit requirements; requiring display of license; prohibiting practice when a person has an communicable disease; providing requirements for school licensure; providing requirement to be an instructor; providing requirements for a salon license; providing salon management requirements; providing booth and chair rental requirements; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions;
providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; providing that a single act is evidence of practice; establishing fees; and establishing continuing education requirements.

Be it enacted by the Legislature of West Virginia:


ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-1. Unlawful acts.
§30-27-4. Board of Barbers and Cosmetologists.
§30-27-5. Powers and duties of the board.
§30-27-7. Fees; special revenue account; administrative fines.
§30-27-8. Professional license requirements.
§30-27-9. Professional license from another state; license to practice in this state.
§30-27-10. Professional license and certificate renewal requirements.
§30-27-12. Student registration.
§30-27-15. School license requirements.
§30-27-16. Certificate requirements to be an instructor in a school.
§30-27-17. Salon license requirements.
§30-27-20. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-27-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice barbering, barber permanent waving, cosmetology, aesthetics, or nail care in this state without a license issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that the person is a licensed aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, cosmetologist crossover or nail technician, unless the person has been licensed under the provisions of this article, and the license has not expired, been suspended or revoked.

(b) No salon, except through a licensee, may render any service or engage in any activity which if rendered or engaged in by an individual, would constitute the practices licensed under the provisions of this article.

(c) No school, except through a licensee, may instruct, render any service or engage in any activity which if taught, rendered or engaged in by an individual, would constitute the practices licensed under the provisions of this article.


The practices licensed under the provisions of this article and the Board of Barbers and Cosmetologists are subject to the provisions of article one of this chapter, the provisions of this article, and any rules promulgated hereunder.


As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:
“Aesthetics” or “esthetics” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) Administering cosmetic treatments to enhance or improve the appearance of the skin, including cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating or performing any other similar procedure on the skin of the human body or scalp;

(2) Applying, by hand or with a mechanical or electrical apparatus, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person’s face, neck, back, shoulders, hands, elbows and feet up to and including the knee;

(3) The rubbing, cleansing, exercising, beautifying or grooming of another person’s face, neck, back, shoulders, hands, elbows and feet up to and including the knee;

(4) The waxing, tweezing and threading of hair on another person’s body;

(5) The wrapping of another person’s body in a body wrap;

(6) Applying artificial eyelashes and eyebrows; and

(7) The lightening of hair on the body except the scalp.

“Aesthetician” or “esthetician” means a person licensed under the provisions of this article who engages in the practice of aesthetics.

“Applicant” means a person making application for a professional license, license, certificate, registration, permit or renewal under the provisions of this article.
(d) "Barber" means a person licensed under the provisions of this article who engages in the practice of barbering.

(e) "Barbering" means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

1. Shaving, shaping and/or trimming the beard;
2. Cutting, singeing, shampooing, arranging, dressing, tinting, bleaching, or applying lotions or tonics on human hair, or a wig or hairpiece; and
3. Applications, treatments or rubs of the scalp, face, or neck with oils, creams, lotions, cosmetics, antiseptics, powders, or other preparations in connection with the shaving, cutting or trimming of the hair or beard.

(f) "Barber crossover" or "cosmetologist crossover" is a person who is licensed to perform barbering and cosmetology.

(g) "Barber permanent waving" means the following acts done on the human body for compensation and not for the treatment of disease:

1. The bleaching or tinting of hair; and
2. The permanent waving of hair.

(h) "Barber permanent wavist" means a person licensed to perform barbering and barber permanent waving.

(i) "Board" means the West Virginia Board of Barbers and Cosmetologists.
(j) “Certificate” means an instructor certificate to teach in a school under the provisions of this article.

(k) “Certificate holder” means a person certified as an instructor to teach in a school under the provisions of this article.

(l) “Cosmetologist” means a person licensed under the provisions of this article who engages in the practice of cosmetology.

(m) “Cosmetology” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

1. Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing, bleaching, tinting, coloring, waxing, tweezing, or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances;

2. Nail care;

3. Applying by hand or with a mechanical or electrical device or appliance, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person’s face, neck, shoulders, hands, elbows and feet up to and including the knee;

4. The rubbing, cleansing, exercising, beautifying or grooming of another person’s face, neck, shoulders, hands, elbows and feet up to and including the knee;

5. The wrapping of another person’s body in a body wrap; and
(6) Performing aesthetics.

(n) “General supervision” means:

(1) For schools, a master or certified instructor is on the premises and is quickly and easily available; or

(2) For salons, a professional licensee is on the premises and is quickly and easily available.

(o) “Hair braiding” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease: Braiding, plaiting, twisting, wrapping, threading, weaving, extending or locking of natural human hair by hand or mechanical device.

(p) “License” means a professional license, a salon license or a school license.

(q) “Licensee” means a person, corporation or firm holding a license issued under the provisions of this article.

(r) “Nail care” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) The cleansing, dressing, or polishing of nails of a person;

(2) Performing artificial nail service; and

(3) The cosmetic treatment of the feet up to the knee and the hands up to the elbow.

(s) “Nail technician” or “manicurist” means a person licensed under the provisions of this article who engages in the practice of nail care.
(t) “Permit” means a work permit.
(u) “Permitee” means a person holding a work permit.
(v) “Professional license” means a license to practice as a aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, cosmetologist crossover or nail technician.
(w) “Registration” means a registration issued by the board to a person who rents or leases a booth or chair from a licensed salon owner and/or operator or a registration issued by the board to a person who is a student in a school.
(x) “Registrant” means a person who holds a registration under the provisions of this article.
(y) “Salon” means a shop or other facility where a person practices under a professional license.
(z) “Salon license” means a license to own and operate a salon.
(aa) “School” means a facility to educate persons to be licensed with professional licenses under the provisions of this article.
(bb) “School license” means a license to own and operate a school.
(cc) “Student registration” means a registration issued by the board to a student to study at a school licensed under the provisions of this article.

§30-27-4. Board of Barbers and Cosmetologists.

(a) The West Virginia Board of Barbers and Cosmetologists is continued. The members of the board in office on July 1, 2009, shall, unless sooner removed, continue
to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) To be effective on July 1, 2009, the Governor shall appoint, by and with the advice and consent of the Senate:

(1) One person who is a licensed cosmetologist for a term of five years;

(2) One person who is a licensed barber for a term of five years;

(3) One person who is a licensed barber crossover or a licensed barber permanent wavist for a term of four years;

(4) One person who is a licensed aesthetician for a term of four years;

(5) One person who is a licensed nail technician for a term of four years;

(6) One person who is a licensed cosmetologist for a term of three years; and

(7) One citizen member, who is not licensed under the provisions of this article and who does not perform any services related to the practice of the professions regulated under the provisions of this article, for a term of three years.

(c) After the initial appointment term, the term shall be for five years. All appointments to the board shall be made by the Governor by and with the advice and consent of the Senate.

(d) Commencing July 1, 2009, the board shall consist of the following seven members:

(1) Two licensed cosmetologists;
(2) One licensed barber;

(3) One licensed barber crossover or licensed barber permanent wavist;

(4) One licensed aesthetcian;

(5) One licensed nail technician; and

(6) One citizen member.

(e) Each licensed member of the board, at the time of his or her appointment, must have held a professional license in this state for a period of not less than three years immediately preceding the appointment.

(f) Each member of the board must be a resident of this state during the appointment term.

(g) A member may not serve more than two consecutive full terms. A member may continue to serve until a successor has been appointed and has qualified. A member serving on the board on June 30, 2009, may be reappointed in accordance with the provisions of this section.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A member of the board immediately and automatically forfeits membership to the board if his or her license to
practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson who serves at the will of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-27-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses, permits, certificates and registrations;
(3) Establish procedures for submitting, approving and rejecting applications for licenses, permits, certificates and registrations;

(4) Determine the qualifications of any applicant for licenses, permits, certificates and registrations;

(5) Prepare, conduct, administer and grade examinations for professional licenses and certificates;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examinations and the pass and fail rate;

(8) Hire, discharge, establish the job requirements and fix the compensation of the executive director;

(9) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees, investigators/inspectors and contracted employees necessary to enforce the provisions of this article: Provided, That any investigator/inspector employed by the board on July 1, 2009, shall retain their coverage under the classified service, including job classification, job tenure and salary, until that person retires or is dismissed: Provided, however, That nothing may prohibit the disciplining or dismissal of any investigator/inspector for cause;

(10) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(11) Establish the criteria for the training of investigators/inspectors;
(12) Set the requirements for investigations and inspections;

(13) Conduct disciplinary hearings of persons regulated by the board;

(14) Determine disciplinary action and issue orders;

(15) Institute appropriate legal action for the enforcement of the provisions of this article;

(16) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(17) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(18) Establish the continuing education requirements for professional licensees and certificate holders;

(19) Issue, renew, combine, deny, suspend, revoke or reinstate licenses, permits, certificates and registrations;

(20) Establish a fee schedule;

(21) 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

(22) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

(1) Establish joint licenses;
(2) Contract with third parties to administer the examinations required under the provisions of this article;

(3) Sue and be sued in its official name as an agency of this state; and

(4) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.


(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses, permits, certificates and registrations;

(2) Procedures for examinations and reexaminations;

(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational and experience requirements;

(5) The passing grade on the examinations;

(6) Standards for approval of courses and curriculum;

(7) Procedures for the issuance and renewal of licenses, permits, certificates and registrations;

(8) A fee schedule;

(9) Continuing education requirements for professional licensees and certificate holders;
(10) The procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, permitees, certificate holders and registrants;

(11) Designating the regions for investigators/inspectors;

(12) Criteria for the training of investigators/inspectors;

(13) Requirements for investigations and inspections;

(14) Requirements for inactive or revoked licenses, permits, certificates and registrations;

(15) Establishing the training program and requirements for instructors for schools licensed under this article;

(16) Establishing operating procedures for salons; and

(17) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board’s rules in effect on July 1, 2009, shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

(c) The board is authorized to file an emergency rule for the implementation of its fee schedule in 2009.

§30-27-7. Fees; special revenue account; administrative fines.

(a) All fees in effect on January 1, 2009, shall remain in effect until they are amended or repealed by legislative rule or statute.

(b) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate
special revenue fund in the State Treasury designated the
“Barbers and Beauticians Special Fund”, which is continued
and shall be known as the “Board of Barbers and
Cosmetologists Special Fund”. The fund is used by the board
for the administration of this article. Except as may be
provided in article one of this chapter, the board retains the
amount in the special revenue account from year to year. No
compensation or expense incurred under this article is a
charge against the General Revenue Fund.

(c) Any amount received as fines, imposed pursuant to
this article, shall be deposited into the General Revenue Fund
of the State Treasury.

§30-27-8. Professional license requirements.

(a) An applicant for a professional license to practice as
a aesthetician, barber, barber crossover, barber permanent
wavist, cosmetologist, cosmetologist crossover or nail
technician shall present satisfactory evidence that he or she:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Has a high school diploma, a GED, or has passed the
“ability to benefit test” approved by the United States
Department of Education;

(4) Has graduated from a school which has been
approved by the board;

(5) Has passed an examination that tests the applicant’s
knowledge of subjects specified by the board: Provided,
That the board may recognize a certificate or similar license
in lieu of the examination or part of the examination that the
board requires;
(6) Has paid the applicable fee;

(7) Presents a certificate of health from a licensed physician;

(8) Is a citizen of the United States or is eligible for employment in the United States; and

(9) Has fulfilled any other requirement specified by the board.

(b) A license to practice issued by the board prior to July 1, 2009, shall for all purposes be considered a professional license issued under this article: Provided, That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.

§30-27-9. Professional license from another state; license to practice in this state.

(a) The board may issue a professional license to practice to an applicant of good moral character who holds a valid license or other authorization to practice in that particular field from another state, if the applicant demonstrates that he or she:

(1) Holds a license or other authorization to practice in another state which was granted after completion of educational requirements substantially equivalent to those required in this state and passed an examination that is substantially equivalent to the examination required in this state;

(2) Does not have charges pending against his or her license or other authorization to practice, and has never had a license or other authorization to practice revoked;
(3) Has not previously failed an examination for professional licensure in this state;

(4) Has paid the applicable fee;

(5) Is a citizen of the United States or is eligible for employment in the United States;

(6) Has presented a certificate of health issued by a licensed physician; and

(7) Has fulfilled any other requirement specified by the board.

(b) In its discretion, the board may examine a person by a written, oral or skills test for licensing under this section, and may enter into agreements for reciprocal licensing with other jurisdictions having substantially similar requirements for licensure.

c) The provisions of this section do not apply to nail technicians or manicurists from another state or jurisdiction. A nail technician or manicurist from another state or jurisdiction is required to show that he or she has completed the required curriculum and has successfully passed the board’s practical skills examination to apply for licensure under the provisions of this article.

§30-27-10. Professional license and certificate renewal requirements.

(a) A professional licensee and certificate holder shall annually or biennially on or before January 1, renew his or her professional license or certificate by completing a form prescribed by the board, paying the renewal fee and submitting any other information required by the board.
Ch. 175] PROFESSIONS AND OCCUPATIONS

(b) The board shall charge a fee for each renewal of a license or certificate, and a late fee for any renewal not paid by the due date.

(c) The board shall require as a condition of renewal of a professional license or certificate that each licensee or certificate holder complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license or certificate.


(a) The board may issue a work permit to practice to an applicant who:

(1) Has graduated from a school approved by the board or has completed the course requirements in a specific field;

(2) Is waiting to take the examination;

(3) Has employment in the field in which he or she applied to take the examination and is working under the general supervision of a professional licensee;

(4) Has paid the work permit fee;

(5) Has presented a certificate of health issued by a licensed physician;

(6) Is a citizen of the United States or is eligible for employment in the United States; and

(7) Meets all the other requirements specified by the board.
(b) A work permit expires at the end of the month after issuance following the next examination in the specific field. A work permit may be renewed once.

(c) While in effect, a work permittee is subject to the restrictions and requirements imposed by this article.

§30-27-12. Student registration.

(a) Prior to commencing studies in a school licensed under the provisions of this article, a student shall acquire a student registration issued by the board.

(b) An applicant for a student registration shall present satisfactory evidence that he or she:

(1) Is a student in an approved school or enrolled in an approved course;

(2) Is of good moral character;

(3) Has paid the required fee;

(4) Has presented a certificate of health issued by a licensed physician; and

(5) Is a citizen of the United States or is eligible for employment in the United States.

(c) The student registration is good during the prescribed period of study for the student.

(d) The student may perform acts constituting barbering, barber permanent waving, cosmetology, aesthetics or nail care in a school under the general supervision of a master or certified instructor.

(a) The board shall prescribe the form for a professional license and work and student permits, including a photograph, and may issue a duplicate license or permit, upon payment of a fee.

(b) Every professional licensee and work permittee shall display his or her license or permit in a conspicuous place at his or her work station.

(c) Every student shall have available his or her student permit and be able to produce it upon request.

(d) Every professional licensee, work permittee or student must present such license, permit or registration to an investigator/inspector or a board member upon request.


(a) It is unlawful for a person to practice as a professional licensee, be a permittee or be a certified instructor while having an infectious, contagious or communicable disease.

(b) The board may, with cause, require a professional licensee, permittee or certified instructor to submit to a physical examination and file a certificate of health.

§30-27-15. School license requirements.

(a) Any person, firm or corporation, whether public or private, and whether organized for profit or not, must have a school license issued by the board to own and/or operate a school.
(b) The board may issue a school license to own and/or operate a school, if the applicant meets the following requirements:

(1) A completed application in writing on forms prescribed by the board, which forms have been signed and verified by the applicant;

(2) Is professionally competent and financially responsible;

(3) Posts a bond in an amount specified by the board;

(4) There is proof that adequate physical facilities will be available for the school;

(5) The proposed school has been inspected by an investigator/inspector to determine whether it is properly fitted and equipped for instruction in the specific fields to be offered;

(6) That persons teaching or instructing at the school are certified by the board as fully qualified instructors; and

(7) Has paid the appropriate fees.

(c) If an applicant desires to own and/or operate more than one school, a separate application shall be made and a separate school license shall be issued for each school.

(d) The board may suspend, revoke or refuse to renew the school license of any school failing to meet the minimum standards and qualifications required for the issuance of an original school license, as set out in this section.

(e) All school licenses must be renewed annually or biennially on or before January 1 and pay a renewal fee.
(f) A license to operate a school issued by the board prior to January 1, 2009, shall for all purposes be considered a school license issued under this article: Provided, That a person holding a school license issued prior to January 1, 2009, must renew the license pursuant to the provisions of this article.

(g) The school license shall be permanently displayed in the school, and a suitable sign shall be displayed at the main entrance of the school plainly indicating what type of school is being operated.

§30-27-16. Certification requirements to be an instructor in a school.

(a) The board may issue a certificate to be an instructor in a school to an applicant who meets the following requirements:

(1) Meets the educational requirements established by the board;

(2) Has completed the required instructor’s training;

(3) Has passed the instructor examination;

(4) Has paid the appropriate fees;

(5) Presents a certificate of health from a licensed physician;

(6) Is a citizen of the United States or is eligible for employment in the United States; and

(7) Has fulfilled any other requirement specified by the board.
(b) All instructor certifications must be renewed annually or biennially on or before January 1, and pay a renewal fee.

(c) A certification to be an instructor issued by the board prior to January 1, 2009, shall for all purposes be considered a certification issued under this article: Provided, That a person holding a certification issued prior to January 1, 2009, must renew the certification pursuant to the provisions of this article.

(d) An instructor with an expired certificate must comply with the following to renew his or her certificate:

(1) Notify the board that he or she wants to be placed on inactive status; or

(2) Pay all lapsed renewal fees;

(3) Present a new certificate of health; and

(4) Meet the qualifications for certification set out in this article.

(e) A certified instructor is not required to have an active professional license, unless the instructor is in fact practicing outside the scope of his or her employment as an instructor.

§30-27-17. Salon license requirements.

(a) Prior to opening a salon, any person, firm or corporation owning and/or operating a salon, and any person, firm or corporation practicing in a field authorized by this article, shall meet the following requirements to acquire a salon license to do business:

(1) The salon has been approved by the board as having met all the requirements and qualifications for the place of business as are required by this article;
(2) Notify the board, in writing, at least twenty days before the proposed opening date, so there can be an inspection of the salon. \textit{Provided}, that if an inspection is not made within ten days of the opening of the salon, or a salon license to open has not been granted or refused, then the salon may open provisionally subject to a later inspection and to all other provisions and rules provided for in this article;

(3) Pay all applicable fees;

(4) All rooms, facilities, bathrooms, toilets and adjoining rooms used in the place of business are kept clean, sanitary, well lighted and ventilated at all times. The use of chunk alum, powder puffs and styptic pencils in any shop is prohibited;

(5) Every professional licensee or permittee in the place of business thoroughly cleans his or her hands with soap and water immediately before serving any patron; and

(6) Every patron is served with clean, freshly laundered linen that is kept in a closed cabinet used for that purpose only. All linens, immediately after being used, must be placed in a receptacle used for that purpose only.

(b) All rules shall be kept posted in a conspicuous place in each place of business.

(c) All salon licenses must be renewed annually or biennially on or before July 1 and pay a renewal fee.

(d) A license to operate a salon issued by the board prior to July 1, 2009, shall for all purposes be considered a salon license issued under this article. \textit{Provided}, that a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.
(e) The salon license shall be permanently displayed in the salon, and a suitable sign shall be displayed at the main entrance of the salon which shall plainly indicate what type of salon is being operated.


(a) Every salon in this state offering the services set forth in this article shall be operated under the supervision and management of a professional licensee licensed under this article.

(b) Any services set forth in this article may be conducted within the same salon. A suitable sign shall be displayed at the main entrance of all salons plainly indicating the business conducted therein.


(a) Any professional licensee who elects to rent or lease a booth or chair from a licensed salon owner and/or operator must comply with the following to receive a registration from the board:

(1) Register with the board;

(2) Register with the State Tax Division and present the registration to the board;

(3) Pay a registration fee;

(4) Notify the board of the length of any rental or lease agreement;

(5) State the name of the person or salon from which a chair or booth is being rented or leased; and
(6) State the effective date of the rental or lease.

(b) If a person registered with the board pursuant to this section elects to move from one salon to rent or lease a chair or booth from another salon, then he or she must register again with the board and pay a fee.

(c) Each licensed salon owner and/or operator who elects to rent or lease chairs or booths shall notify the board in writing of such rental or lease within ten days of the effective date of the rental or lease.

(d) The board shall quarterly notify the State Tax Commissioner of all persons registered pursuant to this section during the previous quarter. Such notice shall be in writing and shall include the following:

(1) The names of all the registered professional licensees;

(2) The names of the salons where space is being rented or leased; and

(3) The length of time of each rental or lease agreement.

(e) All registrations must be renewed annually or biennially on or before July 1 and pay a renewal fee.

(f) A registration to rent or lease a booth or chair issued by the board prior to July 1, 2009, shall for all purposes be considered a registration issued under this article: Provided, That a person holding a registration to rent or lease a booth or chair issued prior to July 1, 2009, must renew the registration pursuant to the provisions of this article.

§30-27-20. Complaints; investigations; due process procedure; grounds for disciplinary action.
(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, permittee, registrant or certificate holder.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, permittee, registrant or certificate holder has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee, permittee, registrant or certificate holder has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, permit, registration or certification or the imposition of sanctions against the licensee, permittee, registrant or certificate holder. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the
license, permit, registration or certification of, impose
probationary conditions upon or take disciplinary action
against, any licensee, permittee, registrant or certificate
holder for any of the following reasons once a violation has
been proven by a preponderance of the evidence:

(1) Obtaining a license, permit, registration or
certification by fraud, misrepresentation or concealment of
material facts;

(2) Being convicted of a felony or other crime involving
moral turpitude;

(3) Being guilty of unprofessional conduct which placed
the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative
rule of the board;

(5) Having had a license or other authorization revoked
or suspended, other disciplinary action taken, or an
application for licensure or other authorization revoked or
suspended by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional
capacity which has endangered or is likely to endanger the
health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section,
effective July 15, 2009, disciplinary action may include:

(1) Reprimand;

(2) Probation;
(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee, permittee, registrant or certificate holder to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.


(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, permittee, registrant or certificate holder has violated
subsection (g) of this section or the board’s rules, a formal
written decision shall be prepared which contains findings of
fact, conclusions of law and a specific description of the
disciplinary actions imposed.


Any licensee, permittee, registrant or certificate holder
adversely affected by a decision of the board entered after a
hearing may obtain judicial review of the decision in
accordance with section four, article five, chapter
twenty-nine-a of this code, and may appeal any ruling
resulting from judicial review in accordance with article six,
chapter twenty-nine-a of this code.

§30-27-23. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article
or otherwise, the board has reason to believe that a licensee,
permittee, registrant or certificate holder has committed a
criminal offense under this article, the board may bring its
information to the attention of an appropriate
law-enforcement official.

(b) Effective July 15, 2009, a person violating a provision
of this article is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than $500 nor more
than $1,000 or confined in jail not more than six months, or
both fined and confined.


In any action brought or in any proceeding initiated under
this article, evidence of the commission of a single act
prohibited by this article is sufficient to justify a penalty,
injunction, restraining order or conviction without evidence
of a general course of conduct.
AN ACT to amend and reenact §30-28-1, §30-28-2, §30-28-3, §30-28-4, §30-28-5, §30-28-6, §30-28-7, §30-28-8, §30-28-9, §30-28-10, §30-28-11, §30-28-12, §30-28-13, §30-28-14, §30-28-15, §30-28-16, §30-28-17 and §30-28-18 of the Code of West Virginia, 1931, as amended; and to amend said article by adding thereto three new sections, designated §30-28-19, §30-28-20 and §30-28-21, all relating to the practice of occupational therapy; providing definitions; setting forth the scope of practice of occupational therapy; prohibiting practice or use of titles unless licensed; removing the requirement for referral by a physician or other health care practitioner; setting forth supervision requirements for assistants and aides; clarifying qualifications to serve as a board member; setting forth powers and duties of the board; providing exemptions from licensure; clarifying qualifications for licensure; setting forth examination requirements; providing for licensure for applicants from other jurisdictions; clarifying conditions of limited permits and temporary licenses; providing for renewal, suspension and revocation of licenses; providing for refusal to renew licenses; providing for reinstatement of lapsed licenses; setting forth complaint procedures; establishing grounds for disciplinary actions; providing for hearing procedures and rights of appeal; providing rulemaking authority; providing for criminal investigations, proceedings and penalties; establishing
that a single act may constitute evidence of practice; establishing special, retired, volunteer and inactive licenses; providing civil immunity for healthcare professionals donating their expertise for the care and treatment of indigent and needy patients in a clinic setting; and providing effective dates for certain provisions.

Be it enacted by the Legislature of West Virginia:

That §30-28-1, §30-28-2, §30-28-3, §30-28-4, §30-28-5, §30-28-6, §30-28-7, §30-28-8, §30-28-9, §30-28-10, §30-28-11, §30-28-12, §30-28-13, §30-28-14, §30-28-15, §30-28-16, §30-28-17 and §30-28-18 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 §30-28-19, §30-28-20 and §30-28-21, all to read as follows:

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

§30-28-1. Short title.
§30-28-4. Scope of practice; license and supervision requirements.
§30-28-5. West Virginia Board of Occupational Therapy.
§30-28-6. Powers and duties of the board.
§30-28-8. Fees; special revenue account; administrative fines.
§30-28-10. Qualifications of applicants for license.
§30-28-11. Examination.
§30-28-12. Licensees from other jurisdictions; internationally educated applicants.
§30-28-13. Issuance of a license, limited permit and temporary license.
§30-28-14. Renewal of license; renewal of lapsed license; suspension, revocation and refusal to renew; reinstatement of revoked license.
§30-28-15. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.
§30-28-16. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-28-17. Procedures for hearing; right to appeal.
§30-28-19. Criminal proceedings; penalties.
§30-28-1. Short title.

1 This article is known and may be cited as the “West Virginia Occupational Therapy Practice Act.”


1 The practices licensed under the provisions of this article and the West Virginia Board of Occupational Therapy are subject to the provisions of article one of this chapter, the provisions of this article, and any rules promulgated hereunder.


1 As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

4 (a) “Association” means the West Virginia Occupational Therapy Association.

6 (b) “Board” means the West Virginia Board of Occupational Therapy.

8 (c) “Business entity” means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity doing business in the State of West Virginia.

12 (d) “Client-related tasks” means tasks which are related to treatment and which, when performed by an occupational therapy aide, must be performed under direct supervision, including routine transfers, routine care of a patient’s personal needs during the course of treatment, execution of an established routine activity or exercise, and assisting the supervising occupational therapist or occupational therapy assistant as directed during the course of treatment.
(e) "Direct supervision" means the actual physical presence of a licensed supervising occupational therapist or licensed occupational therapy assistant, and the specific delineation of tasks and responsibilities for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the limited permit holder, occupational therapy student, or aide. Direct supervision includes direct close supervision and direct continuous supervision.

(f) "Direct close supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is in the building and has daily direct contact at the site of work.

(g) "Direct continuous supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is physically present and in direct line of sight of the occupational therapy student or aide.

(h) "General supervision" means initial direction and periodic inspection of the activities of a licensed occupational therapist assistant by the supervising licensed occupational therapist, but does not necessarily require constant physical presence on the premises while the activities are performed.

(i) "License" means a valid and current license issued by the board under the provisions of this article.

(j) "Nonclient-related tasks" means tasks which are not related to treatment and do not require independent clinical reasoning, including clerical and maintenance activities, housekeeping, preparation of the work area or equipment, transporting patients, and ordering supplies, and which, when performed by an occupational therapy aide, must be performed under general supervision.
(k) “Occupational Therapist” means a person licensed by the board under the provisions of this article to engage in the practice of occupational therapy.

(l) “Occupational Therapy Assistant” means a person licensed by the board under the provisions of this article to assist in the practice of occupational therapy under the general supervision of an Occupational Therapist.

(m) “Occupational Therapy Aide” means a person who may provide nonclient-related tasks under general supervision, or specifically delegated client-related tasks, subject to the conditions set forth in subsection (f), section four of this article, under direct supervision of an Occupational Therapist or an Occupational Therapy Assistant, in accordance with the provisions of this article.

(n) “The practice of occupational therapy” means the therapeutic use of everyday life activities or occupations to address the physical, cognitive, psychosocial, sensory, and other aspects of performance of individuals or groups of individuals, including those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction, to promote health, wellness and participation in roles and situations in home, school, workplace, community and other settings.

§30-28-4. Scope of practice; license and supervision requirements.

(a) The scope of practice of occupational therapy includes, but is not limited to:

(1) Methods or strategies selected to direct the process of interventions such as:
(A) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;

(B) Compensation, modification, or adaptation of activity or environment to enhance performance;

(C) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline;

(D) Health promotion and wellness to enable or enhance performance in everyday life activities; and

(E) Prevention of barriers to performance, including disability prevention.

(2) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure and social participation, including:

(A) Client factors, including body functions and body structures;

(B) Habits, routines, roles and behavior patterns;

(C) Cultural, physical, environmental, social and spiritual contexts and activity that affect performance; and

(D) Performance skills, including motor, process and communication/interaction skills.

(3) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure and social participation, including:

(A) Therapeutic use of occupations and preparatory, adjunctive and functional activities;
(B) Training in self-care, self-management home management and community/work reintegration;

(C) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions, visual, vestibular and behavioral skills;

(D) Therapeutic use of self, including one’s personality, insights, perceptions and judgments, as part of the therapeutic process;

(E) Education and training of individuals, including family members, care givers and others;

(F) Care coordination, case management and transition services;

(G) Consultative services to groups, programs, organizations or communities;

(H) Modification of environments (home, work, school or community) and adaptation of processes, including the application of ergonomic principles;

(I) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, orthotic devices and training in the use of prosthetic devices to enhance occupational performance;

(J) Assessment, recommendation and training in techniques to enhance functional mobility, including wheelchair management;

(K) Community mobility and re-entry;

(L) Management of feeding, eating and swallowing to enable eating and feeding performance; and
Application of physical agent modalities, and use of a range of specific therapeutic procedures and techniques to enhance occupational performance skills. Use of physical agent modalities by occupational therapy assistants must be consistent with their education (e.g. superficial thermal and mechanical modalities) and used under the general supervision of an occupational therapist. The use of deep thermal or electrical modalities may only be performed by the occupational therapy assistant under the direct supervision of an occupational therapist, until the board shall promulgate rules as well as establish competency standards for the use of the modalities.

No person may engage in the practice of occupational therapy or present herself or himself as an occupational therapist or occupational therapy assistant in this state, or use the words “occupational therapist,” “licensed occupational therapist,” “occupational therapist registered,” “occupational therapy assistant,” “licensed occupational therapy assistant,” “certified occupational therapy assistant,” or “occupational therapy aide,” or the letters “O.T.,” “L.O.T.,” “O.T.R.,” “O.T.A.,” “L.O.T.A.,” “C.O.T.A.,” or any other words, letters, abbreviations or insignia indicating or implying that he or she is an occupational therapist or occupational therapy assistant, unless he or she holds a valid, current license issued in accordance with the provisions of this article, which has not expired, been suspended or revoked.

No business entity may advertise or otherwise offer to provide or convey the impression that it is providing occupational therapy unless an individual holding a current valid license or permit under this article renders the occupational therapy services to which reference is made.

An occupational therapy assistant may assist in the practice of occupational therapy under the general supervision of an occupational therapist.
(e) An occupational therapist or an occupational therapy assistant may delegate nonclient-related tasks to an occupational therapy aide only under the following conditions:

(1) The occupational therapy aide functions under the general supervision of either the occupational therapist or the occupational therapy assistant who is under the general supervision of the occupational therapist; and

(2) The occupational therapy aide provides only tasks for which he or she has been trained and has demonstrated competence.

(f) An occupation therapist or an occupational therapy assistant may delegate specifically selected client-related tasks to an occupational therapy aide only under the following conditions:

(1) The occupational therapy aide functions under the direct continuous supervision of either the occupational therapist or the occupational therapy assistant that is under the general supervision of the occupational therapist;

(2) The occupational therapy aide provides only tasks for which he or she has been trained and has demonstrated competence;

(3) The outcome anticipated for the delegated task is predictable;

(4) The client and the environment are stable and will not require judgment, interpretation or adaptation by the occupational therapy aide; and

(5) The supervising occupational therapist is responsible for the tasks delegated to the occupational therapy aide.
§30-28-5. West Virginia Board of Occupational Therapy.

(a) The West Virginia Board of Occupational Therapy is continued with the following five members appointed by the governor by and with the advice and consent of the Senate:

(1) Three licensed occupational therapists;

(2) One licensed occupational therapy assistant; and

(3) One citizen member, who is not licensed under the provisions of this article.

(b) The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services to the public, teaching, consulting or conducting research in occupational therapy for at least three years immediately preceding their appointments.

(c) No board member may serve as an officer of the West Virginia Occupational Therapy Association concurrently with his or her service on the board.

(d) The members of the board in office on December 31, 2008, shall, unless sooner removed, continue to serve until their respective terms expire or their successors have been appointed and qualified.

(e) The term shall be for three years commencing on January 1. A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and qualified.
(f) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than three years immediately preceding the appointment.

(g) Each member of the board must be a resident of this state during the appointment term.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson who serves at the will of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.
57 (o) Prior to commencing his or her duties as a member of
58 the board, each member shall take and subscribe to the oath
59 required by section five, article four of the Constitution of
60 this state.

§30-28-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by legislative rule, in article one of this chapter
3 and elsewhere in law.
4
5 (b) The board shall:
6
7 (1) Hold meetings and conduct hearings;
8
9 (2) Establish requirements for licenses and permits;
10
11 (3) Establish procedures for submitting, approving and
12 rejecting applications for licenses and permits;
13
14 (4) Determine the qualifications of any applicant for a
15 license or permit;
16
17 (5) Propose rules for legislative approval relating to
18 professional conduct and ethical standards of practice;
19
20 (6) Communicate disciplinary actions to relevant state
21 and federal authorities, the National Board for Certification
22 in Occupational Therapy (NBCOT), the American
23 Occupational Therapy Association (AOTA) and other
24 applicable authorities when public safety is at risk;
25
26 (7) Maintain an office and hire, discharge, establish the job
27 requirements and fix the compensation of employees and
28 contracted employees necessary to enforce the provisions of this
29 article including, but not limited to, the executive secretary;
(8) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(9) Conduct disciplinary hearings of persons regulated by the board;

(10) Determine disciplinary action and issue orders;

(11) Institute appropriate legal action for the enforcement of the provisions of this article;

(12) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(13) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(14) Establish by legislative rule the continuing education and competency requirements for licensees;

(15) Issue, renew, combine, deny, suspend, revoke or reinstate licenses and permits;

(16) Establish a fee schedule;

(17) Take all other actions necessary and proper to effectuate the purposes of this article; and

(18) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

(c) The board may:

(1) Approve and contract with third parties to administer the examinations required under the provisions of this article;
(2) Sue and be sued in its official name as an agency of this state; and

(3) Confer with the Attorney General or his or her assistants in connection with legal matters and questions.


(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and permits;

(2) Designate third parties to establish educational requirements and to prepare and/or administer examinations and reexaminations;

(3) Procedures for the issuance and renewal of a license, temporary license and limited permit;

(4) A fee schedule;

(5) Continuing education and competency requirements for licensees;

(6) Establishment of competency standards;

(7) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee or permittee;

(8) Requirements for reinstatement of revoked licenses; and

(9) Any other rules necessary to effectuate the provisions of this article.
(b) The board is authorized to promulgate emergency rules in accordance with section fifteen, article three, chapter twenty-nine-a of this code to establish competency standards for advance treatment techniques as set forth in subdivision six, subsection (a) of this section.

(c) All rules in effect on the effective date of this article shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

§30-28-8. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the “West Virginia Board of Occupational Therapy”, which is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.


This article does not prevent or restrict the practice, services or activities of:

(1) Any person licensed under any other law of this state performing services within the authorized scope of practice for which he or she is licensed;
(2) Any person pursuing a course of study leading to a degree in Occupational Therapy from an accredited educational program if the person acts under the supervision of a clinical supervisor or instructor of the accredited education program and is designated by a title which clearly indicates his or her status as a student; or

(3) Any person fulfilling the supervised fieldwork experience requirements of section ten of this article.

§30-28-10. Qualifications of applicants for license.

To be eligible for a license to engage in the practice of occupational therapy, the applicant must:

(1) Be of good moral character;

(2) Have successfully completed the academic requirements of an educational program for Occupational Therapists or Occupational Therapy Assistants that is accredited by the American Occupational Therapy Association’s Accreditation Council for Occupational Therapy Education (ACOTE) or its predecessor organizations;

(3) Have successfully completed a period of supervised fieldwork experience required by the recognized educational institution where he or she met the academic requirements;

(4) Have passed an examination approved by the board;

(5) Have filed an application on forms provided by the board; and

(6) Have paid the applicable fee.
§30-28-11. Examination.

(a) A person who has met the requirements of subsections (1), (2) and (3), section ten of this article, may make application for examination.

(b) Each applicant for licensure shall be examined by written or computerized examination to test his or her knowledge of the basic and clinical sciences relating to occupational therapy, and occupational therapy theory and practice, including the professional skills and judgment of the applicant in the utilization of occupational therapy techniques and methods, and other subjects the board may require to determine the fitness for practice of the applicant. The examination may be administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT) or another nationally recognized credentialing body as approved by the board.

§30-28-12. Licensees from other jurisdictions; internationally educated applicants.

(a) The board may issue a license to practice to any applicant who presents proof of current licensure as an occupational therapist or an occupational therapy assistant in another jurisdiction which requires standards for licensure considered by the board or by a board-approved credentialing agency to be equivalent to the requirements for licensure in this state and who meets the requirements of section ten of this article.

(b) The board may grant a license to an applicant who was educated outside of the United States or its territories in an educational program whose standards are determined by the board or by a board-approved credentialing agency to be equivalent to the standards required for licensure in this state and who meets the requirements of section ten of this article.
(c) In its discretion, the board may examine a person by a written, oral or skills test for licensing under this section, and may enter into agreements for reciprocal licensing with other jurisdictions having substantially similar requirements for licensure.

§30-28-13. Issuance of a license, limited permit and temporary license.

(a) The board shall issue a license to any person who meets the requirements of this article upon payment of the license fee prescribed.

(b) The board may issue a limited permit to persons who have completed the education and fieldwork experience requirements of this article. The holder of a limited permit may practice occupational therapy only under the direct close supervision of an occupational therapist who holds a current license in this state. A limited permit is not renewable, and is valid for ninety days: Provided, That the limited permit expires immediately if the holder receives notification of a failing score on the examination.

(c) The board may issue a temporary license to an occupational therapist or an occupational therapy assistant who is licensed and in good standing in a jurisdiction whose standards are determined by the board or by a board-approved credentialing agency to be equivalent to the standards required for licensure in this state and who has submitted an application and the required fee. The holder of a temporary license may practice occupational therapy only in accordance with the provisions of this article. A temporary license is nonrenewable and is valid for thirty days.

(d) The board shall prescribe the form of licenses. The licensee shall conspicuously display the license or a copy of the license at his or her principal place of employment. The
licensee shall produce the original license upon the request of the board.

§30-28-14. Renewal of license; renewal of lapsed license; suspension, revocation and refusal to renew; reinstatement of revoked license.

(a) Licenses may be renewed biennially upon documentation of required continuing education and payment of a renewal fee.

(b) A license which has lapsed may be renewed within one year of its expiration date in the manner set by the board. After the expiration of one year, a license may be renewed only by complying with the requirements relating to the issuance of an original license.

(c) The board may suspend, revoke or refuse to renew a license for any reason which would justify the denial of an original application for licensure.

(d) The board may consider the reinstatement of a license which has been revoked upon a showing that the applicant can resume practicing with reasonable skill and safety.

§30-28-15. 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 who are retired or are retiring from the active practice of occupational therapy and who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge.
(b) The special volunteer occupational therapist license shall be issued by the board to occupational therapists licensed or otherwise eligible for licensure under this article 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.

(c) The board shall develop application forms for the special license provided in this section 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.

(d) 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 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, before the rendering of any services by the occupational therapist at the clinic, there must be a written agreement between the occupational therapist and the clinic stating that the occupational therapist will provide voluntary uncompensated occupational therapy services under the control of the clinic to patients of 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.

(e) Notwithstanding the provisions of subsection (d) 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 this section.

(f) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure in this article except the fee requirements.

(g) 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.

(h) 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.

§30-28-16. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall, upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated any provision of subsection (g) of this section or rules promulgated pursuant to this article.
(d) Upon a finding that probable cause exists that the licensee or permittee has violated any provision of this subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpœnas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license of, impose probationary conditions upon or take disciplinary action against, any licensee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

1. Obtaining a license or permit by fraud, misrepresentation or concealment of material facts;

2. Being convicted of a felony or other crime involving moral turpitude;

3. Being guilty of unprofessional conduct as defined by legislative rule of the board;

4. A violation of a lawful order or legislative rule of the board;
(5) Providing substandard care as an Occupational Therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to a patient is established;

(6) Providing substandard care as an Occupational Therapy Assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising Occupational Therapist regardless of whether actual injury to a patient is established;

(7) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills or abilities to perform those responsibilities;

(8) Failing to provide appropriate supervision to an Occupational Therapy Assistant or Aide in accordance with this article and legislative rules of the board;

(9) Practicing as an Occupational Therapist or Occupational Therapy Assistant when competent services to recipients may not be provided due to the therapist’s own physical or mental impairment;

(10) Having had an Occupational Therapist or Occupational Therapy Assistant license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked or suspended by the proper authorities of another jurisdiction;

(11) Engaging in sexual misconduct. For the purposes of this subdivision, sexual misconduct includes:

(A) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person; or
(B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients;

(12) Aiding or abetting a person who is not licensed as an Occupational Therapist or Occupational Therapy Assistant in this state and who directly or indirectly performs activities requiring a license;

(13) Abandoning or neglecting a patient or client under and in need of immediate professional care without making reasonable arrangements for the continuation of care; or

(14) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, effective July 15, 2009, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time; or

(7) Other disciplinary action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.
§30-28-17. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, the administrative law judge shall prepare a proposed written order at the conclusion of a hearing containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee or permittee has violated any provision of this article or the board’s rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.


Any licensee or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.
§30-28-19. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee or permittee has committed a criminal offense under this article, the board may bring the information to the attention of an appropriate law-enforcement official.

(b) Effective July 15, 2009, a person violating a provision of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than $500 nor more than $1,000 or confined in jail not more than six months, or both fined and confined.


In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.


The provisions of this article as amended and reenacted during the regular session of 2009, except for the provisions of sections seven, sixteen and nineteen, are effective as of July 1, 2009.
AN ACT to repeal §30-31-7a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-31-1, §30-31-2, §30-31-3, §30-31-4, §30-31-5, §30-31-6, §30-31-7, §30-31-8, §30-31-9, §30-31-10, §30-31-11, §30-31-12, §30-31-13, §30-31-14 and §30-31-15; and to amend said code by adding thereto two new sections, designated §30-31-16 and §30-31-17, all relating to the Board of Examiners of Counseling; prohibiting the practice of counseling and marriage and family therapy without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rulemaking authority; continuing a special revenue account; establishing license requirements; establishing renewal requirements; providing for exemptions from licensure; providing for licensure for persons licensed in another state; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; providing for privileged communication and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:
That §30-31-7a of the Code of West Virginia, 1931, as amended, be repealed; that §30-31-1, §30-31-2, §30-31-3, §30-31-4, §30-31-5, §30-31-6, §30-31-7, §30-31-8, §30-31-9, §30-31-10, §30-31-11, §30-31-12, §30-31-13, §30-31-14 and §30-31-15, as amended, be amended and reenacted; and to amend said code by adding thereto two new sections, designated §30-31-16 and §30-31-17, all to read as follows:

ARTICLE 31. COUNSELORS.

§30-31-1. License required.

§30-31-2. Applicable law.

§30-31-3. Definitions.

§30-31-4. Board of Examiners in Counseling.

§30-31-5. Powers and duties of the board.

§30-31-6. Rulemaking.

§30-31-7. Fees; special revenue account.

§30-31-8. Requirements for license to practice counseling.

§30-31-9. Requirements for a license to practice marriage and family therapy.

§30-31-10. Renewal requirements.

§30-31-11. Persons exempted from licensure.

§30-31-12. Complaints; investigations; due process procedure; grounds for disciplinary action.


§30-31-15. Criminal proceedings; penalties.


§30-31-17. Single act evidence of practice.

§30-31-1. License required.

It is unlawful for any person to practice or offer to practice professional counseling or marriage and family therapy in this state without a license issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that the person is a licensed professional counselor or a licensed marriage and family therapist unless the person has been licensed under the provisions of this article, and the license has not expired, been suspended, revoked or exempted.

§30-31-2. Applicable law.
The practices of professional counseling and marriage and family therapy, and the Board of Examiners of Counseling are subject to the provisions of article one of this chapter, the provisions of this article and any rules promulgated hereunder.

§30-31-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Applicant" means a person making an application for a license or renewal under the provisions of this article.

(b) "Board" means the West Virginia Board of Examiners in Counseling.

(c) "Clinical counseling procedures" means an approach to counseling that emphasizes the counselor's role in systematically assisting clients through all of the following including, but are not limited to, observing, assessing and analyzing background and current information; utilizing assessment techniques useful in appraising aptitudes, abilities, achievements, interests or attitudes; diagnosing; and developing a treatment plan. The goal of these procedures is the prevention or elimination of symptomatic, maladaptive, or undesired behavior, cognitions, or emotions in order to integrate a wellness, preventative, pathology and multicultural model of human behavior to assist an individual, couple, family, group of individuals, organization, institution or community to achieve mental, emotional, physical, social, moral, educational, spiritual, vocational or career development and adjustment through the life span of the individual, couple, family, group of individuals, organization, institution or community.
(d) "Licensed professional counselor" means a person licensed under the provisions of this article to practice professional counseling.

(e) "Licensee" means a person holding a license issued under the provisions of this article.

(f) "Licensed marriage and family therapist" means a person licensed under the provisions of this article to practice marriage and family therapy.

(g) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders whether cognitive, affective or behavioral, specifically within the context of marriage and family systems, that involve the professional application of theories and techniques to individuals, couples and families, singly or in groups.

(h) "Professional counseling" means the assessment, diagnosis, treatment and prevention of mental, emotional or addiction disorders through the application of clinical counseling procedures. Professional counseling includes the use of psychotherapy, assessment instruments, counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples, families and groups.

§30-31-4. Board of Examiners in Counseling.

(a) The West Virginia Board of Examiners in Counseling is continued. The members of the board in office on July 1, 2009, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) To be effective on July 1, 2009, the Governor shall appoint, by and with the advice and consent of the Senate, a licensed marriage and family therapist from a list of three
nominees submitted by The West Virginia Association of Marriage and Family Therapy, to replace the citizen member whose term ends on June 30, 2009, and for any vacancy thereafter.

(c) Commencing July 1, 2009, the board shall consist of the following seven members:

(1) Two licensed professional counselors engaged in the teaching of counseling at an accredited institution of higher education;

(2) Three licensed professional counselors;

(3) One licensed marriage and family therapist; and

(4) One citizen, who is not licensed under the provisions of this article and who does not perform any services related to the practice of the professions regulated under the provisions of this article.

(d) Each member shall be appointed by the Governor by and with the advice and consent of the Senate. The term is for five years.

(e) A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and has qualified.

(f) Each licensed member shall maintain an active license with the board: Provided, That the initial marriage and family therapist appointed to the board must qualify for licensure under the provisions of section nine of this article.
(g) Each member of the board shall be a resident of West Virginia during the appointment term.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson who serves at the will of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board shall constitute a quorum.

(n) The board shall hold at least two annual meetings. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.
§30-31-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

1. Hold meetings, conduct hearings and administer examinations;
2. Establish requirements for licenses;
3. Establish procedures for submitting, approving and rejecting applications for a license;
4. Determine the qualifications of any applicant for a license;
5. Prepare, conduct, administer and grade written, oral or written and oral examinations for a license;
6. Determine the passing grade for the examinations;
7. Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;
8. Hire, discharge, establish the job requirements and fix the compensation of the executive director;
9. Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce the provisions of this article;
10. Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;
11. Establish a fee schedule;
(12) Issue, renew, deny, suspend, revoke or reinstate a license;

(13) Conduct disciplinary hearings of persons regulated by the board;

(14) Determine disciplinary action and issue orders;

(15) Institute appropriate legal action for the enforcement of the provisions of this article;

(16) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(17) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(18) Establish the continuing education requirements for licensees;

(19) 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

(20) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

(1) Contract with third parties to administer the examinations required under the provisions of this article;

(2) Sue and be sued in its official name as an agency of this state; and
(3) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

§30-31-6. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses to practice professional counseling and marriage and family therapy;

(2) Procedures for examinations and reexaminations;

(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational and experience requirements;

(5) The passing grade on the examination;

(6) Standards for approval of courses;

(7) Procedures for the issuance and renewal of a license;

(8) A fee schedule;

(9) Continuing education requirements for licensees;

(10) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee;

(11) Requirements to reinstate a revoked license;

(12) Specific master's and doctoral degree programs considered to be equivalent to a master's or doctoral degree program required under this article;
(13) The nature of supervised professional experience approved by the board for the purposes of licensure of this article;

(14) A code of ethics; and

(15) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board’s rules in effect on July 1, 2009, shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

§30-31-7. Fees; special revenue account.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the “Board of Examiners in Counseling Fund”. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.

§30-31-8. Requirements for license to practice counseling.

(a) To be eligible for a license to practice professional counseling, an applicant must:

(1) Be of good moral character;
(2) Be at least eighteen years of age;

(3) Be a citizen of the United States or be eligible for employment in the United States;

(4) Pay the applicable fee;

(5)(A)(i) Have earned a master's degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in counseling of such a nature as is designated by the board after earning a master’s degree or equivalent; or

(B)(i) Have earned a doctorate degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in counseling of such a nature as is designated by the board after earning a doctorate degree or equivalent;

(6) Have passed a standardized national certification examination in counseling approved by the board;

(7) Not have been convicted of a felony or crime involving moral turpitude under the laws of any jurisdiction:

(A) If the applicant has never been convicted of a felony or a crime involving moral turpitude, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the
applicant stating that he or she has never been convicted of
a felony or a crime involving moral turpitude; or

(B) If the applicant has been convicted of a felony or a
crime involving moral turpitude, it is a rebuttable
presumption that the applicant is unfit for licensure unless he
or she submits competent evidence of sufficient rehabilitation
and present fitness to perform the duties of a licensed
professional counselor as may be established by the
production of:

(i) Documentary evidence including a copy of the
relevant release or discharge order, evidence showing
compliance with all conditions of probation or parole,
evidence showing that at least one year has elapsed since
release or discharge without subsequent conviction, and
letters of reference from three persons who have been in
contact with the applicant since his or her release or
 discharge; and

(ii) Any collateral evidence and testimony as may be
requested by the board which shows the nature and
seriousness of the crime, the circumstances relative to the
crime or crimes committed and any mitigating circumstances
or social conditions surrounding the crime or crimes and any
other evidence necessary for the board to judge present
fitness for licensure or whether licensure will enhance the
likelihood that the applicant will commit the same or similar
offenses;

(8) Not be an alcohol or drug abuser as these terms are
defined in section eleven, article one-a, chapter twenty-seven
of this code: Provided, That an applicant who has had at
least two continuous years of uninterrupted sobriety in an
active recovery process, which may, in the discretion of the
board, be evidenced by participation in a twelve-step
(9) Has fulfilled any other requirement specified by the board.

(b) A person who holds a license or other authorization to practice counseling issued by another state, the qualifications for which license or other authorization are determined by the board to be at least substantially equivalent to the license requirements in this article, is eligible for licensure.

(c) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees.

(d) A person who has been continually licensed under this article since 1987, pursuant to prior enactments permitting waiver of certain examination and other requirements, is eligible for renewal under the provisions of this article.

(e) A license to practice professional counseling issued by the board prior to July 1, 2009, shall for all purposes be considered a license issued under this article: Provided, That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.

§30-31-9. Requirements for a license to practice marriage and family therapy.

(a) To be eligible for a license to practice marriage and family therapy, an applicant must:

(1) Be of good moral character;
(2) Be at least eighteen years of age;

(3) Be a citizen of the United States or be eligible for employment in the United States;

(4) Pay the applicable fee;

(5)(A)(i) Have earned a master's in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, Council for Accreditation of Counseling and Related Education Programs or a comparable accrediting body as approved by the board or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a master's or equivalent.

(B) (i) Have earned a doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the Council for Accreditation of Counseling and Related Education Programs, or a comparable accrediting body as approved by the board or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a doctorate or equivalent.
(6) Have passed a standardized national certification examination in marriage and family therapy as approved by the board.

(7) Not have been convicted of a felony or crime involving moral turpitude under the laws of any jurisdiction:

(A) If the applicant has never been convicted of a felony or a crime involving moral turpitude, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony or a crime involving moral turpitude; or

(B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes and any other evidence necessary for the board to judge present
(8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered; and

(9) Has fulfilled any other requirement specified by the board.

(b) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees.

(c) A person who is licensed for the five years prior to the effective date of this section and has substantially similar qualifications as required by subdivision (1), (2), (3), (5)(A)(i), (5)(B)(i), (6) and (7) of subsection (a) of this section is eligible for a license to practice marriage and family therapy until July 1, 2013, and is eligible for renewal under section ten.

§30-31-10. Renewal requirements.

(a) A licensed professional counselor and a licensed marriage and family therapist shall annually or biennially renew his or her license at a time determined by the board, by completing a form prescribed by the board, paying the renewal fee and submitting any other information required by the board.
(b) The board shall charge a fee for each renewal of a license and a late fee for any renewal not properly completed and received with the appropriate fee by the board at the appropriate date.

(c) The board shall require as a condition of renewal that each licensee complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

§30-31-11. Persons exempted from licensure.

(a) The following activities are exempt from the provisions of this article:

(1) Teaching, lecturing or engaging in research in professional counseling or marriage and family therapy so long as such activities do not otherwise involve the practice of professional counseling or marriage and family therapy directly affecting the welfare of the person counseled;

(2) The official duties of persons employed as professional counselors or marriage and family therapists by the State of West Virginia or any of its departments, agencies, divisions, bureaus or political subdivisions, counties, county boards of education, regional education service agencies, municipalities or any other facilities or programs established, supported or funded, in whole or in part, by the governmental entity;

(3) The official duties of persons employed as professional counselors or marriage and family therapists by any department, agency, division or bureau of the United States of America;
(4) The official duties of persons serving as professional counselors or marriage and family therapists, whether as volunteers or for compensation or other personal gain, in any public or private nonprofit corporations, organizations, associations or charities;

(5) The official duties of persons who are employed by a licensed professional counselor or licensed marriage and family therapist, whose duties are supervised by a licensed professional counselor or licensed marriage and family therapists and who represent themselves by the title provisionally licensed counselor or provisionally licensed marriage and family therapist, and do not represent themselves as licensed professional counselors or licensed marriage and family therapists as defined in this article;

(6) The activities of a student of professional counseling or marriage and family therapy which are part of the prescribed course of study at an accredited educational institution and are supervised by a licensed professional counselor, licensed marriage and family therapist or by a teacher, instructor or professor of counseling or marriage and family therapy acting within the official duties or scope of activities exempted by this section; or

(7) The activities and services of qualified members of other recognized professions such as physicians, psychologists, psychoanalysts, social workers, lawyers, clergy, nurses or teachers performing counseling or marriage and family therapy consistent with the laws of this state, their training and any code of ethics of their professions so long as such persons do not represent themselves as licensed professional counselors or licensed marriage and family therapists as defined by section three of this article.

(b) Nothing in the article requires licensing of the following persons pursuant to this article:
(1) A school counselor who holds a school counseling certificate issued by the West Virginia Department of Education and who is engaged in counseling solely within the scope of his or her employment with the department, a county board of education or a regional education service agency; or

(2) A nonresident professional counselor or marriage and family therapist who holds a license or other authorization to engage in the practice of professional counseling or marriage and family therapy issued by another state, the qualifications for which in the opinion of the board are at least as stringent as those provided in section eight and section nine of this article, and who renders counseling services in this state for no more than thirty days in any calendar year.

(c) Nothing in this article permits a licensed professional counselor or licensed marriage and family therapist to administer or prescribe drugs or otherwise engage in the practice of medicine as defined in articles three and fourteen of chapter thirty of this code.

§30-31-12. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee has violated any provision of
subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee has violated any provision of subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or the imposition of sanctions against the licensee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license of, impose probationary conditions upon or take disciplinary action against, any licensee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

(4) A violation of a lawful order or rule of the board;
Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization revoked or suspended by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, effective July 15, 2009, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.


(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.
The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee has violated any provision of this article or the board’s rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.


Any licensee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-31-15. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee has committed a criminal offense under this article, the board may bring the information to the attention of an appropriate law-enforcement official.
6 (b) Effective July 15, 2009, a person violating section one
7 of this article is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not less than $500 nor more
9 than $1,000 or confined in jail not more than six months, or
10 both fined and confined.


1 All information communicated to or acquired by a
2 licensee while engaged in the practice of counseling or
3 marriage and family therapy with a client is privileged
4 information and may not be disclosed by the licensee except:

5 (a) With the written consent of the client, or in the case of
6 death or disability, with the written consent of a personal
7 representative or other person authorized to sue, or the
8 beneficiary of any insurance policy on the client's life, health
9 or physical condition;

10 (b) When a communication reveals the contemplation of
11 an act dangerous to the client or others; or

12 (c) When the client, or his or her personal representative,
13 waives the privilege by bringing charges against the licensee.

§30-31-17. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.
AN ACT to repeal §7-4-6a of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-4-6 of said code, relating to the West Virginia Prosecuting Attorneys Institute; increasing the membership of the executive council; permitting the appointment of special prosecutors in matters of juvenile delinquency and child abuse and neglect; and repealing outdated section that continued the Prosecuting Attorneys Institute.

Be it enacted by the Legislature of West Virginia:

That §7-4-6a of the Code of West Virginia, 1931, as amended, be repealed, and that §7-4-6 of said code be amended and reenacted to read as follows:

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia Prosecuting Attorneys Institute.

1 (a) There is continued the West Virginia Prosecuting
2 Attorneys Institute, a public body whose membership shall
3 consist of the fifty-five elected county prosecuting attorneys
in the state. The Institute shall meet at least once each
calendar year and the presence of twenty-eight of the
fifty-five prosecutors at any meeting constitutes a quorum for
the conduct of the Institute's business.

(b) There is continued the Executive Council of the
West Virginia Prosecuting Attorneys Institute which shall
consist of seven prosecuting attorneys elected by the
membership of the West Virginia Prosecuting Attorneys
Institute at its annual meeting and two persons appointed
annually by the county commissioner's association of West
Virginia. The executive council shall elect one member of
the council to serve as chairman of the institute for a term of
one year without compensation. The executive council shall
serve as the regular executive body of the institute.

(c) There is continued the position of Executive Director
of the West Virginia Prosecuting Attorneys Institute to be
employed by the executive council of the institute. The
Executive Director of the West Virginia Prosecuting
Attorneys Institute shall serve at the will and pleasure of the
executive council of the institute. The executive director
shall be licensed to practice law in the State of West Virginia
and shall devote full time to his or her official duties and may
not engage in the private practice of law.

(d) The duties and responsibilities of the institute, as
implemented by and through its executive council and its
executive director, shall include the following:

(1) The provision for special prosecuting attorneys to
pursue a criminal matter, a juvenile delinquency matter or a
matter involving child abuse neglect pursuant to chapter
forty-nine of this code, or in any matter wherein a special
prosecutor previously appointed has failed to take any action
thereon within such time as the Executive Director deems
unreasonable, not to exceed three terms of court from the
date on which the special prosecutor was appointed: 

Provided, That such replacement or original appointment may be any attorney with a license in good standing in this state in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

(2) The establishment and implementation of general and specialized training programs for prosecuting attorneys, their staffs and, where determined practical by the executive council and executive director, all statutorily authorized law-enforcement or investigative agencies of the state or its political subdivisions;

(3) The provision of materials for prosecuting attorneys and their staffs, including legal research, technical assistance and technical and professional publications;

(4) The compilation and dissemination of information on behalf of prosecuting attorneys and their staffs on current developments and changes in the law and the administration of criminal justice;

(5) The establishment and implementation of uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

(6) The acceptance and expenditure of grants, moneys for reimbursement of expenses, gifts and acceptance of services from any public or private source;

(7) The entering into of agreements and contracts with public or private agencies, groups, organizations or educational institutions;
(8) The identification of experts and other resources for use by prosecutors in criminal matters;

(9) The recommendation to the Legislature or the Supreme Court of Appeals of the State of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties of the state; and

(10) The development of a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information the institute considers appropriate.

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case, a juvenile delinquency matter or a matter involving child abuse neglect pursuant to chapter forty-nine of this code, or in any matter wherein a special prosecutor previously appointed has failed to take any action thereon within such time as the Executive Director deems unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed: Provided, That such replacement or original appointment may be any attorney with a license in good standing in this state. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case, a juvenile delinquency matter or a matter involving child abuse or neglect pursuant to chapter forty-nine of this code in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result
of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action. No person who is serving as a prosecuting attorney or an assistant prosecuting attorney of any county is required to take an additional oath when appointed to serve as a special prosecuting attorney.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all fifty-five prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the same terms and conditions as set forth in this section. The executive director of the institute, with the approval of the executive council, shall appoint special prosecuting attorneys from the appointment list for any particular matter giving due consideration to the proximity of the proposed special prosecuting attorney's home county to the county requesting a special prosecutor and giving due consideration to the expertise of the special prosecuting attorney.

(g) Each county commission shall pay, on a monthly basis, a special prosecution premium to the Treasurer of the state for the funding of the West Virginia Prosecuting Attorneys Institute. The monthly premiums shall be paid according to the following schedule:
### PROSECUTING ATTORNEYS INSTITUTE

**MONTHLY PREMIUMS**

Assessed Valuation of Property of All Classes in the County

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$1,500,000,000</td>
<td>Unlimited</td>
<td>$400</td>
</tr>
<tr>
<td>B</td>
<td>$1,000,000,000</td>
<td>$1,499,999,000</td>
<td>$375</td>
</tr>
<tr>
<td>C</td>
<td>$800,000,000</td>
<td>$999,999,000</td>
<td>$350</td>
</tr>
<tr>
<td>D</td>
<td>$700,000,000</td>
<td>$799,999,000</td>
<td>$325</td>
</tr>
<tr>
<td>E</td>
<td>$600,000,000</td>
<td>$699,999,000</td>
<td>$300</td>
</tr>
<tr>
<td>F</td>
<td>$500,000,000</td>
<td>$599,999,000</td>
<td>$250</td>
</tr>
<tr>
<td>G</td>
<td>$400,000,000</td>
<td>$499,999,000</td>
<td>$200</td>
</tr>
<tr>
<td>H</td>
<td>$300,000,000</td>
<td>$399,999,000</td>
<td>$150</td>
</tr>
<tr>
<td>I</td>
<td>$200,000,000</td>
<td>$299,999,000</td>
<td>$100</td>
</tr>
<tr>
<td>J</td>
<td>-0-</td>
<td>$199,999,000</td>
<td>$50</td>
</tr>
</tbody>
</table>

(h) Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in article two, chapter four of this code, the Treasurer shall deposit the funds into a special revenue fund to be known as the "West Virginia Prosecuting Attorneys Institute Fund". All costs of operating the West Virginia Prosecuting Attorneys Institute shall be paid from the West Virginia Prosecuting Attorneys Institute Fund upon proper authorization by the executive council or by the executive
director of the institute and subject to annual appropriation by
the Legislature of the amounts contained within the fund.

(i) The institute shall annually, by the first day of the
regular Legislative session, provide the Joint Committee on
Government and Finance with a report setting forth the
activities of the institute and suggestions for legislative
action.

(j) Neither the institute nor its employees acting in their
employment capacity shall engage in activities before
governmental bodies which advocate positions on issues
other than those issues consistent with the duties of the
institute set forth in subsection (d) of this section.

CHAPTER 179

(Com. Sub. for S.B. 695 - By Senators Tomblin, Mr. President,
Helmick, Foster, McCabe and Kessler)

[Amended and again passed May 28, 2009, as a result of the
objections of the Governor; in effect from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §5-5-6 of the Code of West
Virginia, 1931, as amended, relating to payment for unused
sick leave; limiting employees to a lifetime payment of
$25,000; providing caps on the amount the daily rate of pay is
calculated by; removing eligibility of certain higher education
employees to receive payment for unused sick leave; providing
that payment may be made upon application and verification
that the employee is eligible for payment; and specifying
provisions to be applied retroactively.
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) The Legislature declares that it is the purpose of this section to create a fund to reduce the unfunded liability that arises from the extended insurance coverage for eligible employees under section thirteen, article sixteen of this chapter, part of the West Virginia Public Employees Insurance Act.

(b) 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: Provided, That any employee who applies for payment under this section may not be paid more than a total of $25,000, either at one time or over the course of multiple payments for unused sick leave.

(c) An employee who applies for payment under this section shall be paid at a rate equal to one quarter of his or her usual rate of daily pay during that calendar year.

(1) 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: Provided, That for any employee that falls under the provisions of subsection (d), section thirteen, article sixteen of this chapter, the highest monthly salary that the daily rate of pay shall be calculated by is $6,700. Any employee who falls under the provisions of said subsection and is paid more than $6,700 per month shall receive payment for unused sick leave at a rate equal to one quarter of the daily rate of pay of an employee paid a monthly salary of $6,700: Provided, however, That for any employee that falls under the provisions of subsection (e), section thirteen, article sixteen of this chapter, the highest monthly salary that the daily rate of pay shall be calculated by is $4,200. Any employee who falls under the provisions of said subsection and is paid more than $4,200 per month shall receive payment for unused sick leave at a rate equal to one quarter of the daily rate of pay of an employee paid a monthly salary of $4,200: Provided further, That any employee who falls under the provisions of subsection (g), section thirteen, article sixteen of this chapter is not eligible for payment under this section.

(2) As used in this section, “workday” does not include weekends.

(3) Any payment for unused sick leave may not be a part of final average salary computation.

(d) Payment for unused sick leave may be made upon application and after the Secretary of the Department of Administration verifies that the employee is eligible for payment under this section. Payments shall be made out of the fund established in subsection (g) of this section.

(e) 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 (b) 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.

(f) 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.

(g) The special revenue account within the State Treasury known as the State Employee Sick Leave Fund is continued. 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 administered by the Secretary of the Department of Administration.

(h) 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. The rules may also include provisions to adjust, when necessary, the highest monthly salary by which the daily rate of pay is calculated.

(i) 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.

(j) The provisions of this section are retroactive to December 1, 2008, to the extent that the provisions apply to those employees who have previously applied for payment for unused sick leave and have not been paid.
AN ACT to amend and reenact §5-16-12a of the Code of West Virginia, 1931, as amended, relating to the requirement that employers provide reasonable documentation to the Director of the Public Employees Insurance Agency.

Be it enacted by the Legislature of West Virginia:

That §5-16-12a 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.

§5-16-12a. Inspections; violations and penalties.

(a) Employers participating in any of the Public Employees Insurance Agency plans shall provide, to the director, upon request, all documentation reasonably required for the director to discharge the responsibilities under this article. This documentation shall include employment records sufficient to verify actual full-time employment of the employer’s employees who participate in the Public Employees Insurance Agency plans.
(b) Upon a determination of the director or his or her designated representative that there is probable cause to believe that fraud, abuse or other illegal activities involving transactions with the agency has occurred, the director or his or her designated representative is authorized to refer the alleged violations to the Insurance Commissioner for investigation and, if appropriate, prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this section, "transactions with the agency" includes, but is not limited to, application by any insured or dependent, any employer or any type of health care provider for payment to be made to that person or any third party by the agency.

(c) Any person who violates any provision of this article for which no other penalty is specifically provided is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of not less than $100 but not more than $500, or imprisonment for a period of not less than twenty-four hours but not more than fifteen days, or both.

CHAPTER 181

(S.B. 492 - By Senators Minard, Helmick and McCabe)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended, relating to the terms of participation in the Public Employees Insurance Agency of dependent children and employees hired on or after July 1, 2009, upon retirement.
Be it enacted by the Legislature of West Virginia:

That §5-16-13 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.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

(a) Cost-sharing.-- The director shall provide under any contract or contracts entered into under the provisions of this article that the costs of any group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance benefit plan or plans shall be paid by the employer and employee.

(b) Spouse and dependent coverage. -- Each employee is entitled to have his or her spouse and dependents included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage to which the employee is entitled to participate: Provided, That the spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term "primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the
spouse or dependent is the named insured or certificate holder. For the purposes of this section, "dependent" includes an eligible employee's unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in Section 152 of the Internal Revenue Code. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee's coverage for his or her spouse and dependents.

(c) *Continuation after termination.* -- If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer's share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(d) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, 1988.* -- Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is
compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, 1988. -- Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or when the participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who
has been a participant under spouse or dependent coverage and who reenters the plan within twelve months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after July 1, 1988.

(f) Increased retirement benefits for retired employees with accrued annual and sick leave. -- In the alternative to the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee participating in the plan may be applied, on the basis of two days’ retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system. However, the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(g) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for certain higher education employees. -- Except as otherwise provided in subsection (l) of this section, when an employee, who is a higher education full-time faculty member employed on an annual contract basis other than for twelve months, is compelled or required by law to retire before reaching the age of sixty-five, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis
other than for twelve months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of West Virginia Board of Trustees and the board of directors of the state college system, for individual coverage, or one additional year for each five years of teaching service for "family" coverage.

(h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the conditions of the "retired employee" definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(i) Retiree participation. -- All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter retiring are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

(j) Surviving spouse and dependent participation. -- A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any group insurance coverage provided under this article to which the deceased employee was entitled, and the spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(k) Elected officials. -- In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the
Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of those positions preclude the arising or accumulation of any leave, so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(l) Participation of certain former employees. -- An employee, eligible for coverage under the provisions of this article who has twenty years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for twenty years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays one hundred five percent of the cost of retiree coverage: Provided, That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.

(m) Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, 2001. -- Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: Provided, That any person who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from
employment and he or she elects to participate in the plan upon his or her reemployment.

(n) Prohibition on conversion of accrued years of teaching service for extended coverage upon retirement for new employees who elect to participate in the plan July, 2009. -- Any employee hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement.

AN ACT to amend and reenact §5-16-16 of the Code of West Virginia, 1931, as amended, relating to the ability of Public Employees Insurance Agency to enter into capitated provider arrangements for the provision of primary health care services.

Be it enacted by the Legislature of West Virginia:

That §5-16-16 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.

§5-16-16. Preferred provider plan.
The director shall, on or before April 1, 1988, or as soon as practicable, establish a preferred provider system for the delivery of health care to plan participants by all health care providers, which may include, but not be limited to, medical doctors, chiropractors, physicians, osteopathic physicians, surgeons, hospitals, clinics, nursing homes, pharmacies and pharmaceutical companies.

The director shall establish the terms of the preferred provider system and the incentives therefor. The terms and incentives may include multi-year renewal options as are not prohibited by the Constitution of this state and capitated primary care arrangements which are not subject to the provisions of article twenty-five-a of chapter thirty-three of this code.

CHAPTER 183

(S.B. 464 - By Senators Minard, Helmick, McCabe and Chafin)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-24a, relating to authorizing the Public Employees Insurance Agency to establish a fee for paper transactions that could be performed electronically.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16-24a, to read as follows:
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-24a. Paper transactions.

1 The director may, by rule as authorized in section twenty-four of this article, establish a fee not to exceed $5 per transaction which the Public Employees Insurance Agency may charge to employers for performing business transactions with the agency by paper when the transaction could be performed electronically.

CHAPTER 184

(S.B. 756 - By Senators Wells, Caruth and Browning)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §15-1B-22 of the Code of West Virginia, 1931, as amended, relating to military facilities; security guards’ qualifications, duties and powers; and authorizing National Guard firefighters to respond to accidents or emergencies in areas adjacent to military facilities.

Be it enacted by the Legislature of West Virginia:

That §15-1B-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1B. NATIONAL GUARD.
§15-1B-22. Military facilities; security guards; qualifications; duties; powers.

(a) Notwithstanding any provision of this code to the contrary, bona fide members of the West Virginia National Guard assigned by the Adjutant General to function as security guards to safeguard military property of the state or of the United States who have successfully completed a training program in law enforcement approved by the Adjutant General and the Superintendent of the West Virginia Department of Public Safety shall be deemed to have met all the requirements for certification as a law-enforcement officer set forth in section five, article twenty-nine, chapter thirty of this code. Those members of the West Virginia National Guard who are so designated as security guards and who have successfully completed such training program are hereby empowered:

(1) To make arrests on military installations of the state or of the United States for any violations of the law of this state or of the United States occurring on any such military installation;

(2) To patrol areas immediately adjacent to military installations to provide for its security and to safeguard military personnel, equipment and other government assets located on said installation; Provided, That nothing in this subparagraph shall confer upon security guards the right to enter upon private property;

(3) To cooperate with state and local authorities in detecting and apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state or of the United States, or of any ordinance of any municipality of this
(4) To respond to areas adjacent to military facilities and installations at the request of state and local authorities to provide support and mutual aid in the event of accidents, emergency or otherwise.

(b) Any security guard, duly appointed by the Adjutant General, knowing or having reasonable cause to believe that a person has violated the law while situate on a military installation, may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such person.

(c) For the purposes of this section, the term "military installation" shall mean a facility under the command of the Adjutant General.

(d) Notwithstanding any provision of this code to the contrary, bona fide members of the West Virginia National Guard assigned by the Adjutant General to function as firefighters to safeguard military property of the state or of the United States are hereby empowered to respond to areas adjacent to military facilities and installations at the request of state and local authorities to provide support and mutual aid in the event of accidents, emergency or otherwise.
CHAPTER 185

(Com. Sub. for S.B. 318 - By Senator Kessler)

[Passed April 11, 2009; in effect ninety days from passage.]  
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to the duties and powers of the director and officers of the West Virginia Division of Protective Services; extending division jurisdiction over state property throughout the state under certain circumstances; and clarifying that division has no responsibility for providing security for state facilities outside the Capitol Complex.

Be it enacted by the Legislature of West Virginia:

That §15-2D-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and supervision of the division. The director and any officer of the division specified by the director may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha County as members of the West Virginia State Police as set forth in subsections (b) and (d), section twelve, article two of this chapter: Provided, That the director and designated members shall have such powers
Ch. 185]  PUBLIC SAFETY  1487

9 throughout the State of West Virginia in investigating and
10 performing law-enforcement duties for offenses committed
11 on the Capitol Complex or related to the division’s security
12 and protection duties at the Capitol Complex: Provided,
13 however, That the director and designated members shall
14 have said powers throughout the state relating to offenses and
15 activities occurring on any property owned, leased or
16 operated by the State of West Virginia when undertaken at
17 the request of the agency occupying the property: Provided
18 further, That nothing in this article shall be construed as to
19 obligate the director or the division to provide or be
20 responsible for providing security at state facilities outside
21 the Capitol Complex.

22 (b) Any officer of the division shall be certified as a law-
23 enforcement officer by the Governor's Committee on Crime,
24 Delinquency and Correction or may be conditionally
25 employed as a law-enforcement officer until certified in
26 accordance with the provisions of section five, article twenty-
27 nine, chapter thirty of this code.

28 (c) The director may:

29 (1) Employ necessary personnel, all of whom shall be
30 classified exempt, assign them the duties necessary for the
31 efficient management and operation of the division and
32 specify members who may carry, without license, weapons
33 designated by the director;

34 (2) Contract for security and other services;

35 (3) Purchase equipment as necessary to maintain security
36 at the Capitol Complex and other state facilities as may be
37 determined by the Secretary of the Department of Military
38 Affairs and Public Safety;

39 (4) Establish and provide standard uniforms, arms,
40 weapons and other enforcement equipment authorized for use
41 by members of the division and shall provide for the periodic
42 inspection of the uniforms and equipment. All uniforms,
43 arms, weapons and other property furnished to members of
44 the division by the State of West Virginia is and remains the
45 property of the state;
46
47 (5) Appoint security officers to provide security on
48 premises owned or leased by the State of West Virginia;
49
50 (6) Upon request by the Superintendent of the West
51 Virginia State Police, provide security for the Speaker of the
52 West Virginia House of Delegates, the President of the West
53 Virginia Senate, the Governor or a justice of the West
54 Virginia Supreme Court of Appeals;
55
56 (7) Gather information from a broad base of employees
57 at and visitors to the Capitol Complex to determine their
58 security needs and develop a comprehensive plan to maintain
59 and improve security at the Capitol Complex based upon
60 those needs; and
61
62 (8) Assess safety and security needs and make
63 recommendations for safety and security at any proposed or
64 existing state facility as determined by the Secretary of the
65 Department of Military Affairs and Public Safety, upon
66 request of the secretary of the department to which the
67 facility is or will be assigned.
68
69 (d) The director shall:
70
71 (1) On or before July 1, 1999, propose legislative rules
72 for promulgation in accordance with the provisions of article
73 three, chapter twenty-nine-a of this code. The rules shall, at
74 a minimum, establish ranks and the duties of officers within
75 the membership of the division.
76
77 (2) On or before July 1, 1999, enter into an interagency
78 agreement with the Secretary of the Department of Military
72 Affairs and Public Safety and the Secretary of the
73 Department of Administration, which delineates their
74 respective rights and authorities under any contracts or
75 subcontracts for security personnel. A copy of the
76 interagency agreement shall be delivered to the Governor, the
77 President of the West Virginia Senate and the Speaker of the
78 West Virginia House of Delegates and a copy shall be filed
79 in the office of the Secretary of State and shall be a public
80 record.

81 (3) Deliver a monthly status report to the Speaker of the
82 West Virginia House of Delegates and the President of the
83 West Virginia Senate.

CHAPTER 186

(Com. Sub. for S.B. 706 - By Senators Unger, Jenkins,
Green, Stollings, Foster, Prezioso, Plymale, Kessler,
Williams and McCabe)

[Passed April 11, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §15-2-53, relating
to the establishment of a leave donation program for the largest
statewide professional law-enforcement association
representing members of the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §15-2-53, to read as
follows:
ARTICLE 2. WEST VIRGINIA STATE POLICE.


(a) Notwithstanding any provision of this code to the contrary, members of the largest statewide professional law-enforcement association representing members of the West Virginia State Police may donate annual leave time to the president of the association. The president may designate the vice president of the association or the chairman of the association’s board of directors to act on his or her behalf. The West Virginia State Police will calculate the dollar value of the donated leave based on the hourly rate of the donor multiplied by the number of hours of annual leave to be donated and the donee will use the annual leave at the present dollar value of the donee’s hourly rate. The donated annual leave may be used by the president or designee in the performance of his or her duties including: (1) Assistance to members; and (2) the legislative session and legislative meetings.

(b) When the president of the association or his or her designee uses the donated annual leave he or she is considered on personal annual leave of absence with pay just as if he or she used his or her annual leave. While the president of the association or his or her designee are using donated annual leave, all payroll deductions and employee status are maintained as if he or she had used his or her regularly accrued annual leave. All donated leave that is not used by July 1 of every year will be forfeited to the state and no unused donated leave may be used to add to the president’s or his or her designee’s retirement.

(c) No member of the association shall be considered absent from service as a member of the West Virginia State Police while serving as president of the association, or as his
or her designee in that capacity: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member of the West Virginia State Police Retirement System who is serving or has served as president of the association, or as his or her designee, shall make deposits to the West Virginia State Police Retirement Fund, for the time of any absence, in an amount equal to the sum of the amount which both the employer and the employee would have contributed in his or her regular assignment for a like period of time: Provided further, That if the president of the association, or his or her designee, is a member of the West Virginia State Police Death, Disability and Retirement Fund, he or she may not receive service credit for time spent serving as president or the president’s designee.

CHAPTER 187

(Com. Sub. for S.B. 694 - By Senators Kessler and White)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-28, relating to mutual aid agreements; establishing a statewide intrastate mutual aid system; setting forth legislative findings; authorizing the Director of the Division of Homeland Security and Emergency Management to propose a statewide mutual aid agreement; establishing procedures to allow local jurisdictions to elect not to participate; establishing procedures to amend the mutual aid agreement; creating a Statewide Intrastate Mutual
Aid Committee; and establishing procedures for comment for changes to the agreement and the reenactment of the agreement.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5-28, to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


(a) The Legislature hereby finds that emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and property and for the best use of available assets, both public and private. The purpose of this section is to create a system of intrastate mutual aid between participating political subdivisions in the state. The system shall provide for mutual assistance among the participating political subdivisions in the prevention of, response to and recovery from any disaster that results in a formal state of emergency in a participating political subdivision, subject to that participating political subdivision's criteria for declaration. The system shall provide for mutual cooperation among the participating subdivisions in conducting disaster-related exercises, testing or other training activities outside actual declared emergency periods. This section provides no immunity, rights or privileges for any individual responding to a state of emergency that is not requested or authorized to respond by a participating political subdivision. Participating political subdivisions will be ensured, to the fullest extent possible, eligibility for state and federal disaster funding.
(b) The Statewide Intrastate Mutual Aid Committee is hereby created. The committee shall consist of eleven members from various different public safety entities and other governmental entities who shall be appointed by the Governor. The Director of the Division of Homeland Security and Emergency Management, or his or her designee, shall chair the committee. This committee shall be multidisciplinary and representative of emergency management and response disciplines as well as local government. It shall be the committee's responsibility to hold, at a minimum, annual meetings to review the progress and status of statewide mutual aid, assist in developing methods to track and evaluate activation of the system and to examine issues facing participating political subdivisions regarding the implementation of this legislation. The committee may prepare an annual report on the condition and effectiveness of mutual aid in the state, make recommendations for correcting any deficiencies and submit that report to the appropriate legislative committee or other governing body. Members of the committee shall serve a maximum two-year term.

(c) Upon the enactment of this legislation, all political subdivisions within the state are members of the statewide mutual aid system: Provided, That a political subdivision within the state may elect not to participate or to withdraw from the system upon the enactment of an appropriate resolution by its governing body declaring that it elects not to participate in the statewide mutual aid system. A copy of any such resolution shall be provided to the Division of Homeland Security and Emergency Management.

(d) This section does not preclude participating political subdivisions from entering into supplementary agreements with another political subdivision and does not affect any other agreement to which a political subdivision may currently be a party to, or decide to be a party to.
"Emergency responder", as used in this article, shall mean anyone with special skills, qualifications, training, knowledge and experience in the public or private sectors that would be beneficial to a participating political subdivision in response to a locally declared emergency as defined in any applicable law or ordinance or authorized drill or exercises; and who is requested and authorized to respond. Under this definition, an emergency responder may be required to possess a license, certificate, permit or other official recognition for his or her expertise in a particular field or area of knowledge. An emergency responder could include, but is in no way limited to, the following: Law-enforcement officers, firefighters, emergency medical services personnel, physicians, nurses, other public health personnel, emergency management personnel, public works personnel, local emergency debris removal teams, those persons with specialized equipment operations skills or training or any other skills needed to provide aid in a declared emergency.

(f) It shall be the responsibility of each participating political subdivision with jurisdiction over and responsibility for emergency management within that certain subdivision to do all of the following:

(1) Identify potential hazards that could affect the participant using an identification system common to all participating jurisdictions.

(2) Conduct joint planning, intelligence sharing and threat assessment development with contiguous participating political subdivisions, and conduct joint training at least biennially.

(3) Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the participating political subdivision.
(4) Adopt and implement the National Incident Management System approved by the State of West Virginia.

(g) A participating political subdivision may request assistance of other participating political subdivisions in preventing, mitigating, responding to and recovering from disasters that result in locally declared emergencies or in concert with authorized drills or exercises as allowed under this section. Requests for assistance shall be made to the Division of Homeland Security and Emergency Management through the designated county emergency management director by the chief executive officer of a participating political subdivision, or his or her designee for response. Requests may be verbal or in writing. Verbal requests will be followed up with a written request as soon as is practical or such number of days as the state, in its discretion, may dictate.

(h) The obligation of a participating political subdivision to provide assistance in the prevention of, response to and recovery from a locally declared emergency or in authorized drills or exercises is subject to the following conditions:

(1) A participating political subdivision requesting assistance must have either declared a state of emergency in the manner outlined in this section or authorized drills and exercises;

(2) A responding participating political subdivision may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction;

(3) Emergency response personnel of a responding participating political subdivision shall continue under the command and control of their responding jurisdiction to include medical protocols, standard operating procedures and other protocols, but shall be under the operational control of
the appropriate officials within the National Incident Management System of the participating political subdivision receiving the assistance; and

(4) Assets and equipment of a responding participating political subdivision shall continue under the control of the responding jurisdiction, but shall be under the operational control of the appropriate officials within the National Incident Management System of the participating political subdivision receiving the assistance.

(i) If a person or entity holds a license, certificate or other permit issued by a participating political subdivision or the state evidencing qualification in a professional, mechanical or other skill and the assistance of that person or entity is requested by a participating political subdivision, the person or entity shall be deemed to be licensed, certified or permitted in the political subdivision requesting assistance for the duration of the declared emergency or authorized drills or exercises and subject to any limitations and conditions the chief executive of the participating political subdivision receiving the assistance may prescribe by executive order or otherwise.

(j) (1) Any requesting political subdivision shall reimburse the participating political subdivision rendering aid under this system and in accordance with procedures developed by the Statewide Intrastate Mutual Aid Committee, provided the request for aid is authorized by the Division of Homeland Security and Emergency Management. A participating political subdivision providing assistance may determine to donate assets of any kind to a receiving participating political subdivision. Requests for reimbursement shall be in accordance with procedures developed by the Statewide Intrastate Mutual Aid Committee.
(2) Should a dispute arise between parties to the system regarding reimbursement, involved parties will make every effort to resolve the dispute within thirty days of written notice of the dispute by the party asserting noncompliance. In the event that the dispute is not resolved within ninety days of the notice of the claim, either party may request the dispute be solved through arbitration. Any arbitration under this provision shall be conducted under the commercial arbitration rules of the American Arbitration Association.

(k) The Statewide Intrastate Mutual Aid Committee shall develop comprehensive guidelines and procedures that address, including, but not limited to, the following: Projected or anticipated costs, checklists for requesting and providing assistance, recordkeeping for all participating political subdivisions, reimbursement procedures and other necessary implementation elements along with the necessary forms for requests and other records documenting deployment and return of assets.

(l) Personnel of a participating political subdivision responding to or rendering assistance for a request who sustain injury or death in the course of, and arising out of, their employment are entitled to all applicable benefits normally available to personnel while performing their duties for their employer. Responders shall receive any additional state and federal benefits that may be available to them for line-of-duty deaths.

(m) All activities performed under this section are deemed hereby to be governmental functions. For the purposes of liability, all persons responding under the operational control of the requesting political subdivision are deemed to be employees of the requesting participating political subdivision.

(n) Whenever the law-enforcement officials of any political subdivision are rendering outside aid pursuant their lawful authority, and with the approval of the Director of the
West Virginia Division of Homeland Security and Emergency Management, and under the authority of a state of emergency as officially proclaimed by the Governor, such law-enforcement officials shall have the same authority, powers, duties, rights, privileges and immunities as if they were performing their law-enforcement duties in the political subdivisions in which they are normally employed. The authority vested in the law-enforcement official, in accordance with this section, shall vest upon reporting in person to the Emergency Management Agency official in charge and on duty at the county or city of destination assignment. The law-enforcement official shall act under the authority, supervision and control of the highest ranking law-enforcement official within the assigned outside jurisdiction. Law enforcement and powers of arrest authority will not attach to the law-enforcement official while in transit from his or her jurisdiction of origin en route to his or her assigned jurisdiction under intrastate mutual aid assistance.

CHAPTER 188

(Com. Sub. for S.B. 279 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed April 11, 2009; in effect ninety days from passage.] [Approved by the Governor on May 12, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5B-3a, relating generally to industrial and railroad accidents and emergencies; providing definitions; requiring the reporting of certain industrial emergencies to the Mine and Industrial Accident
Emergency Operations Center or local emergency telephone system operators; requiring industrial facilities to provide certain information to state and local emergency responders; requiring operators of railroad facilities in this state to provide certain information to state and local emergency responders in the event of a railroad accident or emergency; granting state and local officials access to the person or persons charged with managing an industrial or railroad emergency and certain areas affected by the emergency; requiring state and local officials to timely provide information related to public health, safety and welfare regarding hazardous waste releases and other emergency events; authorizing the Director of the Division of Homeland Security and Emergency Management to promulgate emergency legislative rules establishing a list of facilities subject to the requirements of this section and establishing procedures; providing for civil penalties; requiring the collected moneys to be deposited into the Hazardous Waste Emergency Response Fund; and authorizing the promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5B-3a, to read as follows:

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

§15-5B-3a. Industrial facility emergency event notification and access.

(a) Definitions. -- Unless the context in which used clearly requires a different meaning, the following words and phrases as used in this section have the following meanings:

(1) “Industrial facility” means:
(A) Any facility that is required to submit a risk management plan to the United States Environmental Protection Agency pursuant to regulations promulgated under Section 112(r) of the Clean Air Act of 1990, 42 U. S. C.§7412(r), including the property upon which the facility is located and any buildings appurtenant thereto or associated therewith, including storage facilities; or

(B) A facility which is a factory, mill, plant or refinery, other than a coal facility, including the property upon which a factory, mill, plant or refinery is located and any buildings appurtenant thereto or associated therewith, including storage facilities, found by the director to be of a type to have a reasonable potential to have an emergency event: Provided, That before any facility may be subject to the provisions of this section, the owner or operator of each facility must be placed on actual written notice via certified mail, return receipt requested, of the facility’s inclusion thereon, as well as the requirements imposed by the provisions of this section and any rules promulgated thereunder: Provided, however, That the list required by the provisions of this section shall be filed with the President of the Senate and the Speaker of the House of Delegates by the first day of the 2010 legislative session.

(2) “Appropriate state and local officials” means the Governor or his or her representative, the Director of the Division of Homeland Security and Emergency Management, a representative designated by the Director of the Division of Homeland Security and Emergency Management who has been trained and qualified by the Federal Emergency Management Agency’s (FEMA) National Incident Management System (NIMS) program and/or a representative of a local emergency management agency who has been trained and qualified by FEMA’s NIMS program.
(3) "Director" means the Director of the Division of Homeland Security and Emergency Management.

(4) "Emergency event" means an unplanned event, including, but not limited to, an explosion, a fire that cannot be contained within fifteen minutes of discovery, the release of a reportable quantity, as specified in 40 C. F. R. §302 (2009) or its successor, of an extremely hazardous substance listed in the appendices to 40 C. F. R. §355 (2009) or its successor, loss of life or serious personal injury at an industrial facility: Provided, That the director may, by promulgation of a legislative rule, establish a higher threshold report level for a particular extremely hazardous substance than is set in the aforementioned Code of Federal Regulations citation.

(b) Reporting requirement.

(1) Within fifteen minutes of the industrial facility ascertaining the occurrence of an emergency event at an industrial facility, the industrial facility shall contact the Mine and Industrial Accident Emergency Operations Center by telephone at the statewide telephone number established by the director or shall contact a local emergency telephone system, as defined in article six, chapter twenty-four of this code, by telephone at the number established by the system to communicate the occurrence of the emergency event: Provided, That if telephone communications fail for any reason, the industrial facility shall contact local emergency services in the most expeditious manner possible. The industrial facility shall provide the following information:

(A) The name and title of the individual making the report;

(B) The name and address of the facility; and

(C) Notification that an emergency event has occurred.
(2) If the caller has ready access to the following information, he or she shall also provide:

(A) Then-available information concerning the nature and extent of the emergency event, including any information that concerns the existence or nonexistence of potential threats to the public health;

(B) In the event of an unplanned fire that cannot be contained within fifteen minutes, explosion or release as defined in this section, preliminary information regarding the type of substance involved and, if a release, the estimated amount released, if known; and

(C) The name, title and contact information of the individual designated to serve as a contact person on behalf of the industrial facility.

(3) Any call made pursuant to this subsection may be recorded by the agency receiving the call. In the event that an industrial facility contacts a local emergency telephone system to report an emergency event, the local emergency telephone system shall immediately forward all information received to the Mine and Industrial Accident Emergency Operations Center.

(c) Event communications. -- As soon as practicable after providing the notice required under subsection (b) of this section, the industrial facility shall implement a communications system designed to provide timely information to appropriate state and local officials. At a minimum, the industrial facility shall designate a person to serve as a contact for state and local emergency responders. Any person so designated shall, upon the request of an appropriate state or local official, provide such additional information known or subsequently known that may be necessary to assess the extent of the emergency or to provide appropriate public assistance.
(d) Authorized access to public officials. -- As soon as practicable after the occurrence of an emergency event, the industrial facility shall, upon request, provide appropriate state and local officials with timely authorized access to the person or persons charged with managing the event on behalf of the facility and the area(s) where the emergency event is being managed or the industrial facility's response to the emergency event is being coordinated. The industrial facility shall also provide appropriate state and local officials with timely authorized access to any areas affected by the emergency event: Provided, That the industrial facility has determined those areas to be reasonably safe: Provided, however, That within thirty minutes of obtaining information that affects the public health, safety and welfare, state and local officials shall notify the public of any hazardous materials or events which may affect the area.

(e) Civil penalties. --

(1) The director shall impose a civil penalty of up to $100,000 on the industrial facility if he or she determines that the industrial facility failed to comply with the reporting requirement of subsection (b) of this section. No penalty shall be imposed upon an industrial facility giving notice pursuant to this section for unintentionally providing inaccurate or incomplete preliminary information to the Mine and Industrial Accident Emergency Operations Center or local emergency telephone system: Provided, That the industrial facility implemented reasonable efforts to provide the most accurate and complete preliminary information possible: Provided, however, That the industrial facility implemented reasonable efforts to correct inaccurate or incomplete preliminary information reported to the Mine and Industrial Accident Emergency Operations Center or local emergency telephone system once such information was determined by the industrial facility to be inaccurate or incomplete.
The director shall impose a civil penalty on the operator or operators of an industrial facility if he or she determines that the industrial facility failed to comply with the communication or access requirements of subsections (c) and (d) of this section. Application of this subdivision and amounts levied as civil penalties by the director shall be determined in accordance with legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code.

The director may waive the imposition of a civil penalty imposed under this section: Provided, That he or she finds that the failure to comply with the requirements of this section was caused by circumstances outside the control of the industrial facility.

All moneys collected pursuant to this section shall be deposited in the Hazardous Waste Emergency Response Fund, as established pursuant to section three, article nineteen, chapter twenty-two of this code.

Nothing in this section may be construed to:

1. Relieve an industrial facility from any other reporting or notification requirement imposed under state or federal law;

2. Limit in any way the jurisdiction of state and local emergency responders;

3. Limit the police power authority of the Governor; or

4. Limit the authority of the State Fire Marshal.

The director, working in cooperation with the Department of Environmental Protection, the State Fire Marshal and the State Emergency Response Commission, shall promulgate legislative rules identifying a list of industrial facilities that are subject to the requirements of this section.
(h) The Division of Homeland Security and Emergency Management is authorized to promulgate rules, including emergency rules, pursuant to the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section.

CHAPTER 189

[Com. Sub. for S.B. 453 - By Senators Green, White, Laird, Chafin, Yost, Minard, Unger, Kessler, Bowman, K. Facemyer, D. Facemire and Plymale]

[Passed April 3, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §24-1-9 of the Code of West Virginia, 1931, as amended, relating to the Public Service Commission; recommended decisions by hearing commissioner, examiner or panel; service of decisions on parties, including by electronic transmission; and removing antiquated language.

Be it enacted by the Legislature of West Virginia:

That §24-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-9. Recommended decision by hearing commissioner, hearing examiner or panel.
(a) Any order recommended by a single hearing commissioner, a hearing examiner or a panel consisting of a hearing examiner and a single commissioner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law, which findings of fact shall make specific reference to the evidence in the record which supports such findings and shall be filed with the commission. A copy of such recommended order shall be served upon the parties who have appeared in the proceeding.

(b) Before any order is recommended, the parties shall be afforded an opportunity to submit, within the time prescribed by the hearing commissioner, hearing examiner or panel, proposed findings of fact and conclusions of law and briefs.

(c) The commission shall serve a copy of the recommended order on the parties by one of the following means:

(1) By certified U. S. mail, return receipt requested; or

(2) By electronic transmission: Provided, That the party has the capability to receive the electronic transmission, has furnished an electronic address and has agreed in writing to accept recommended orders electronically. Electronic transmissions shall contain a “return receipt” or “read receipt” mechanism to assure that a recommended order was received by the party: Provided, however, That if the commission does not receive a confirmatory electronic transmission acknowledging the recommended order was received by the party, via return receipt, read receipt or electronic mail, within three business days of service, the commission shall serve the recommended order by certified U. S. mail, return receipt requested.

(d) Service is complete when the recommended order is placed in the mail or transmitted electronically to the party.
(e) Within the time prescribed, the parties shall be afforded an opportunity to file exceptions to the recommended order and a brief in support, provided the time fixed is not less than fifteen days from the date of service of such recommended order.

(f) In all proceedings in which exceptions have been filed to a recommended order, the commission, before issuing its final order, may afford the parties an opportunity for oral argument. When exceptions are filed, the commission shall consider the exceptions. If sufficient reason appears for the exceptions, the commission may grant the review or make an order or hold or authorize further hearings or proceedings. The commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order thereon.

(g) When no exceptions are filed within the time specified, the recommended order shall become the order of the commission five days following the expiration of the period for filing exceptions unless the order is stayed or postponed by the commission: Provided, That the commission may, on its own motion before the order becomes the order of the commission, review any matter and take action as if exceptions had been filed.

(h) The commission, a hearing commissioner, a hearing examiner or panel to whom a matter is referred may expedite the hearing and decision of any case, if the public interest requires, by the use of pretrial conferences, stipulations and agreements, prepared testimony, depositions, daily transcripts of evidence, trial briefs and oral argument in lieu of briefs.
AN ACT to amend and reenact §24B-5-3 of the Code of West Virginia, 1931, as amended, relating to pipeline companies paying a special license fee to the Public Service Commission; and increasing the maximum amount of revenue from $300,000 per annum to $315,000 per annum.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-3. Funding; property and revenue license fees.

1 (a) Every pipeline company shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the Public Service Commission and levied by it upon each of such pipeline companies according to the number of three-inch equivalent pipeline miles included in its pipeline facilities and shall be apportioned among such pipeline companies upon the basis of the pipeline companies’ reports submitted to the commission in such form as the commission may prescribe,
so as to produce a revenue of not more than $315,000 per annum, which fees shall be paid on or before July 1 in each year.

(b) Such sums collected under subsection (a) of this section shall be paid into the State Treasury and kept as a special fund, designated the Public Service Commission Pipeline Safety Fund, to be appropriated as provided by law for the purpose of paying the salaries, compensation, costs and expenses of its employees. Any balance in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and may be appropriated as provided in this subsection. All funds which heretofore were in the Public Service Commission Gas Pipeline Safety Fund shall be transferred to the Public Service Commission Pipeline Safety Fund.

CHAPTER 191

(S.B. 493 - By Senators Prezioso, Oliverio and Stollings)

[Passed April 8, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §18-10A-15 of the Code of West Virginia, 1931, as amended, relating to changing control of the central registry for severe head injuries from the Division of Vocational Rehabilitation to the Center for Excellence in Disabilities.

Be it enacted by the Legislature of West Virginia:

That §18-10A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 10A. REHABILITATION SERVICES.


(a) The Center for Excellence in Disabilities shall maintain a central registry of persons who sustain severe head injury other than through disease, whether or not permanent disability results, in order to facilitate the provision of appropriate services through referral and collaboration with the division and other state agencies for such persons.

(b) The current acute care facility shall report to the Center for Excellence in Disabilities by the most expeditious means within seven days after identification of any person sustaining such an injury. The report shall contain the name and residence of the person and the name of the current acute care facility.

CHAPTER 192

(Com. Sub. for H.B. 2702 - By Delegate Spencer)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-9c, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23 and §7-14D-30 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System
Act; making technical changes, modifying definitions; clarifying when membership ceases; specifying procedures for the correction of errors; defining employer error; permitting rollovers of any dollar amount; clarifying loan offsets at time of withdrawal; providing onset date for receipt of disability benefits; providing for the termination of disability benefits when a retirant refuses to submit to a medical examination or provide certification from their physician of continued disability; removal of option for members with loans to purchase declining term insurance; permitting subsequent loans to members sixty days after full payment of an outstanding loan; and providing for the collection of fees from employers for untimely payment of contributions.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-9c, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23 and §7-14D-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.
§7-14D-5. Members.
§7-14D-7. Members’ contributions; employer contributions.
§7-14D-9c. Direct rollovers.
§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.
§7-14D-15. Same – Due to other causes.
§7-14D-16. Same – Physical examinations; termination of disability.
§7-14D-23. Loans to members.
§7-14D-30. Limitation of county liability.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation
2 or the context clearly requires a different meaning:
(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service. 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 nine-a of this article.

(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to article ten-c, chapter five of this code, either pursuant to section seven of this article or section twenty-nine, article ten, chapter five of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "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.

(e) "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 retirement board in accordance with the provisions of this article.

(f) "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 $150,000 as adjusted for cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board: Provided, That the member has ceased covered employment and reached early or normal retirement age.

(i) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last twelve months of employment. Until a member has worked twelve months, annualized base salary is used as base salary.

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

(k) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(l) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section fourteen or fifteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff 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: Provided, That the deputy sheriff contributes to the fund created in section six of this article the amount specified as the deputy sheriff's contribution in section seven of this article.

(m) "Credited service" means the sum of a member's years of service, active military duty, disability service and annual leave service.

(n) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen of this chapter.

(o) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(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 the member's death; and
(C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

(p) "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.

(q) "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 section fourteen or fifteen of this article.

(r) "Early retirement age" means age forty or over and completion of twenty years of service.

(s) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(t) "Effective date" means July 1, 1998.

(u) "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. 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 section fourteen or fifteen of 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 seventeen of this article
multiplied by twelve.

(v) "Fund" means the West Virginia Deputy Sheriff
Retirement Fund created pursuant to section six of this
article.

(w) "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,
ilness, 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 paragraph 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 fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or
agreed to be paid by the employing county commission,
irrespective of mitigation of damages. The same hours of
service shall not be credited both under this paragraph and
paragraph (1) or (2) of 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.

(x) "Member" means a person first hired as a deputy
sheriff after the effective date of this article, as defined in
subsection (r) of this section, or a deputy sheriff first hired
prior to the effective date and who elects to become a
member pursuant to section five or section seventeen of 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 or until cessation of membership pursuant to section
five of this article.

(y) "Monthly salary" means the portion of a member's
annual compensation which is paid to him or her per month.

(z) "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.

(aa) "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 service; (2) while still
in covered employment, attainment of at least age fifty years
and when the sum of current age plus years of service equals
or exceeds seventy years; (3) while still in covered
employment, attainment of at least age sixty years and
completion of five years of service; or (4) attainment of age
sixty-two years and completion of five or more years of
service.
(bb) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable 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. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two-thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(cc) "Public Employees Retirement System" means the West Virginia Public Employee's Retirement System created by article ten, chapter five of this code.

(dd) "Plan" means the West Virginia Deputy Sheriff Death, Disability and Retirement Plan established by this article.

(ee) "Plan year" means the twelve-month period commencing of July 1, of any designated year and ending the following June 30.

(ff) "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.

(gg) "Retirement income payments" means the annual retirement income payments payable under the plan.

(hh) "Spouse" means the person to whom the member is legally married on the annuity starting date.
(ii) "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.

(jj) "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 subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff 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.

(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. A member's receipt of social security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(kk) "Year of service". -- A member shall, except in his or her first and last years of covered employment, be credited with year 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:
254 Hours of Service Years of Service Credited

255 Less than 500 ......................... 0

256 500 to 999 ............................ 1/3

257 1,000 to 1,499 ........................ 2/3

258 1,500 or more ....................... 1

259 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. 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 fourteen or fifteen 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 thirteen 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 thirteen of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

277 (II) "Required beginning date" means April 1, of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

§7-14D-5. Members.
(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and 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.

The membership of any person in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section twenty-three of the article, plus accrued interest, equals or exceeds the accumulated contributions of the member.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board, of his or her desire to become a member of the plan: Provided, That this time period is extended to January 30, 1999, in accordance with the decision of the Supreme Court of Appeals in *West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No. 25212: Provided, however, That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the ten-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff 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 deputy sheriff remains employed in covered
employment in this plan: Provided further, That any deputy
sheriff who elects during the time period from July 1, 1998
to January 30, 1999 or who so elects during the ten-day time
period occurring immediately following the day after the day
the amendments made during the 1999 legislative session
become law, to transfer from the Public Employees
Retirement System to the plan created in this article shall
contribute to the plan created in this article at the rate set
forth in section seven of this article retroactive to July 1,
1998. Any deputy sheriff 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 deputy sheriff 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 deputy sheriff’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 a deputy sheriff. All the credited service
standing to the transferring deputy sheriff’s credit in the
Public Employees Retirement Fund System at the time of
transfer into this plan shall be transferred into the plan
created by this article, and the transferring deputy sheriff
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 deputy sheriff would
have received from the Public Employees Retirement System
as if the transfer had not occurred. In connection with each
transferring deputy sheriff 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 section eight of this article: Provided, That a 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 become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date of this article, but was not employed as a deputy sheriff on the effective date of this article, shall become a member upon rehire as a deputy sheriff. For purposes of this subsection, the member’s years of service and credited service in the Public Employees Retirement System prior to the effective date of this article shall not be counted for any purposes under this plan unless:

(1) The deputy sheriff has not received the return of his or her accumulated contributions in the Public Employees Retirement 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 section thirteen of this article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff’s covered employment shall be counted as years of service for the purposes of this article.

(e) Once made, the election provided in this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.
107    (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 leased employee, the board has final power to decide the question.

§7-14D-7. Members' contributions; employer contributions.

1    (a) 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. An additional amount shall be paid to the fund by the county commission of the county in which the member is employed in covered employment in an amount determined by the board: Provided, That in no year may the total of the contributions provided in this section, to be paid by the county commission, exceed ten and one-half percent of the total payroll for the members in the employ of the county commission. If the board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than fifteen days following the end of the calendar month.

17    (b) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the deputy sheriff 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 make an additional contribution to the fund of eight and one-half percent of his or her monthly salary earned from any additional employment which
requires the deputy sheriff to be a member of another retirement which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount shall be paid to the fund by the concurrent employer for which the member is employed in an amount determined by the board: Provided, That in no year may the total of the contributions provided in this section, to be paid by the concurrent employer, exceed ten and one-half percent of the monthly salary of the employee. If the board finds that the benefits provided by this article can be funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than fifteen days following the end of the calendar month.

(c) If any change or employer error in the records of any participating public employer or the retirement system results in any member receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error, and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the retirement board reinstatement interest as established in Legislative Rule 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.
§7-14D-9c. Direct rollovers.

This section applies to distributions made on or after January 1, 1993. 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. For distributions after December 31, 2001, 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 December 31, 2001, 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 plan to the eligible retirement plan.
§7-14D-13. 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 or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member’s accumulated contributions after offset of any outstanding loan balance, plus accrued interest, pursuant to section twenty-three of this article. 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 of this plan 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 or offset accumulated contributions from either this plan or the Public Employees Retirement System relating to the prior covered employment unless following his or her return to covered employment and active participation in this plan, the member redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary earned while a deputy sheriff, 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 service in 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 deputy sheriff’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) of section five 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 nondeputy sheriff service which were withdrawn from the Public Employees Retirement System plan 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 subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(e) Notwithstanding any other provision of this article, forfeitures under the plan shall 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 either totally or partially 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 law-enforcement functions during either scheduled work hours or at any other time; and (4) in the opinion of the board, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of 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 contributory period preceding the member’s disability award, or the shorter period if the member has not worked twelve months.

(c) If the member is partially disabled, the member shall receive forty-five percent of his or her average full monthly compensation for the twelve-month contributory period preceding the member’s disability award, or the shorter period if the member has not worked twelve months.

(d) If the member remains partially disabled until attaining sixty years of age, the member shall then receive the retirement benefit provided in sections eleven and twelve of this article.

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§7-14D-15. Same — Due to other causes.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in section fourteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of the board, he or she is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments the compensation set forth in either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average full monthly compensation for the twelve-month contributory
(c) If the member is partially disabled, he or she shall receive thirty-three and one-third percent of his or her average full monthly compensation for the twelve-month contributory period preceding the disability award, or the shorter period, if the member has not worked twelve months.

(d) If the member remains disabled until attaining sixty years of age, then the member shall receive the retirement benefit provided in sections eleven and twelve of this article.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning member disability payments so as to ensure that the payments do not exceed one hundred percent of the average current salary in any given county for the position last held by the member.

(f) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§7-14D-16. Same -- Physical examinations; termination of disability.

(a) The board may require any member who has applied for or is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X ray, medical and physicians’ fees. A report of the findings of any physician shall be submitted in writing to the board for its
consideration. If, from the report, independent information, or from the report and any hearing on the report, the board is of the opinion and finds that: (1) The member has become reemployed as a law-enforcement officer; (2) two physicians who have examined the member have found that considering the opportunities for law enforcement in West Virginia, the member could be so employed as a deputy sheriff; or (3) other facts exist to demonstrate that the member is no longer totally disabled or partially disabled as the case may be, then the disability benefits shall cease. If the member was totally disabled and is found to have recovered, the board shall determine whether the member continues to be partially disabled. If the board finds that the member is no longer totally disabled but is partially disabled, then the member shall continue to receive partial disability benefits in accordance with this article. Benefits shall cease once the member has been found to be no longer either totally or partially disabled: Provided, That the board shall require recertification for each partial or total disability at regular intervals as specified by the guidelines adopted by the Public Employees Retirement System.

(b) If a retirant refuses to submit to a medical examination or submit a statement by his or her physician certifying continued disability in any period, his or her disability annuity may be discontinued by the board until the retirant complies. If the refusal continues for one year, all the retirant's rights in and to the annuity may be revoked by the board.

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than $500 nor more than $8,000: Provided, That the
maximum amount of any loan shall not exceed the lesser of the following: (1) $8,000; or (2) fifty percent of his or her accumulated contributions. No member is eligible for more than one outstanding loan at any time. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. Upon full payment of the loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(b) If a withdrawal of accumulated contributions is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the loan balance due with interest to date shall be deducted from the withdrawal.

(c) A member with an unpaid loan balance who wishes to retire or who becomes eligible to receive disability benefits under any provisions of this article may have the loan repaid in full by accepting retirement income or disability payments reduced by deducting from the actuarial reserve for the
accrued benefit the amount of the unpaid balance plus
accrued interest, if any, and then converting the remaining of
the reserve to a monthly pension or disability benefit payable
in the form of the annuity desired by the member: Provided,
That if payment of the member’s monthly retirement income
or disability income is suspended or terminated for any
reason, upon recommencement of the payments, the actuarial
reduction in benefit may be recalculated for additional
interest accruals, to the extent determined necessary and
appropriate by the board.

(d) A member who ceases service with an unpaid loan
balance will no longer be a member when the unpaid loan
balance, plus accrued interest, equals or exceeds the
member’s accumulated contributions.

(e) 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: (1) Any payment of principal
and accrued interest on a loan remains unpaid after they
become due and payable under the terms of the loan or after
the grace period established in the discretion of the retirement
board; (2) the borrowing member attempts to make an
assignment for the benefit of creditors of his or her benefit
under the retirement system; or (3) any other event of default
set forth in rules promulgated by the board pursuant to the
authority granted in section one, article ten-d, chapter five of
this code: Provided, That any offset of an unpaid loan
balance shall be made only at such time as the member is
entitled to receive a distribution under the plan.

(f) 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 may
determine.
(g) Notwithstanding anything in this section 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. The board may: (1) 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 Sections 72(p)(2) and Section 401 of the Internal Revenue Code; (2) adopt plan loan policies or procedures consistent with these federal law provisions; and (3) take any actions it considers necessary or appropriate to administer the plan loan program created under this section in accordance with these federal law provisions. The 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, notwithstanding any provision in this article to the contrary.

(h) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any deputy sheriff who becomes a member of the Deputy Sheriff Retirement System on or after July 1, 2005.

§7-14D-30. Limitation of county liability.

No county which has timely met all of its obligations under this article is liable for any payments or contributions to the deputy sheriff retirement plan which are owed to the plan by another county or counties. No county commission may deposit funds into the deputy sheriff retirement fund in excess of the amount specified in section seven of this article, the fees set forth in article fourteen-e of this chapter, the fees set forth in subsection (f)(2), section one, article ten-d,
chapter five of this code, and the fees set forth in section seventeen, article three, chapter seventeen-a of this code.

CHAPTER 193

(Com. Sub. for H.B. 2703 - By Delegate Spencer)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-23, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, all relating to State Teachers Retirement System; making technical changes; modifying definitions; specifying cessation of membership; clarifying loan offsets at time of withdrawal; specifying procedures for the correction of errors; permitting rollovers of any dollar amount; and permitting loan borrowers to receive retirement income or disability payments when outstanding loan balance is deducted from the actuarial reserve of accrued benefit.

Be it enacted by the Legislature of West Virginia:

That §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-23, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

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

2 (1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

3 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

4 (3) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

5 (4) "Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

6 (5) "Beneficiary" means the recipient of annuity payments made under the retirement system.

7 (6) "Contributor" means a member of the retirement system who has an account in the Teachers Accumulation Fund.

8 (7) "Deposit" means a voluntary payment to his or her account by a member.
(8) "Employer" means the agency of and within the state which has employed or employs a member.

(9) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(10) "Employment term" means employment for at least ten months, a month being defined as twenty employment days.

(11) "Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(13) "Member" means any person who has accumulated contributions standing to his or her credit in the Teachers
Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to section thirteen of this article.

(14) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(15) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

(16) "New entrant" means a teacher who is not a present teacher.

(17) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education, (B) the State Board of Education, (C) the Higher Education Policy Commission, (D) the West Virginia Council for Community and Technical College Education, or (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(18) "Plan year" means the twelve-month period commencing on July 1 and ending the following June 30 of any designated year.

(19) "Present member" means a present teacher who is a member of the retirement system.
(20) "Present teacher" means any person who was a teacher within the thirty-five years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(21) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(22) "Public schools" means all publicly supported schools, including colleges and universities in this state.

(23) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(24) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years;
or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.

(28) "Retirement system" means the State Teachers Retirement System established by this article.

(29) "Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) the executive director of the retirement board; (G) members of the research, extension, administrative or library staffs of the public schools; (H) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (I) employees of the state Board of Education who are performing services of an educational nature; (J) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (K) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or the Division of Human Services; (L) an employee of the state Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers Retirement System provided in this article.
§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the following:

(a) New entrants, whose membership in the system is compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia Public Employees Retirement System, the judge's retirement system, or the retirement system of the West Virginia State Police or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system ceases:

(1) Upon the withdrawal of accumulated contributions after the cessation of service; or (2) upon effective retirement date; or (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section thirty-four of this article or section five, article seven-d of this chapter, plus accrued interest, equals or exceeds the member’s accumulated contributions.

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently
reenters the retirement system may repay to the retirement
fund the amount withdrawn, plus interest at a rate set by the
board, compounded annually from the date of withdrawal to
the date of repayment: Provided, That no repayment may be
made until the former member has completed two years of
contributory service after reentry; and the member shall be
accorded all the rights to prior service and experience as were
held at the time of withdrawal of the accumulated
contributions: Provided, however, That no withdrawn
service may be reinstated that has been transferred to another
retirement system from which the member is currently or will
in the future draw benefits based on the same service. The
interest paid shall be deposited in the reserve fund.

(d) No member is eligible for prior service credit unless
he or she is eligible for prior service pension, as prescribed
by section twenty-two of this article; however, a new entrant
who becomes a present teacher as provided in this
subdivision shall be considered eligible for prior service
pension upon retirement.

(e) Any individual who is a leased employee is not
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.

§18-7A-14. Contributions by members; contributions by
employers; correction of errors.

(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 July 1, 1994, the rate shall be seven and one-half percent; beginning July 1, 1995, the rate shall be nine percent; beginning July 1, 1996, the rate shall be ten and one-half percent; beginning July 1, 1997, the rate shall be twelve percent; beginning July 1, 1998, the rate shall be thirteen and one-half percent; and beginning July 1, 1999, 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 July 1, 2005, 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.

(f) If any change or employer error in the records of any participating public employer or the retirement system results in any member receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error, and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the Legislative Rule, Retirement Board Reinstatement Interest, 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.


(a) Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:
(1) A contributor who withdraws from service for any cause other than death, disability or retirement shall, upon application, be paid his or her accumulated contributions up to the end of the fiscal year preceding the year in which application is made, after offset of any outstanding loan balance, plus accrued interest, pursuant to section thirty-four of this article, but in no event shall interest be paid beyond the end of five years following the year in which the last contribution was made: Provided, That the contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(2) If the contributor has completed twenty years of total service, he or she may elect to receive at retirement age an annuity which shall be computed as provided in this article: Provided, That if the contributor has completed at least five, but fewer than twenty, years of total service in this state, he or she may elect to receive at age sixty-two an annuity which shall be computed as provided in this article. The contributor must notify the retirement board in writing concerning the election. If the contributor has completed fewer than five years of service in this state, he or she shall be subject to the provisions as outlined in subdivision (1) of this subsection.

(b) Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old and if his or her total service as a teacher was at least twenty-five years at the time of his or her death, then the surviving spouse of the deceased, provided the spouse is designated as the sole refund beneficiary, is eligible for an annuity computed as though the deceased were actually a retired teacher at the time of death and had selected a survivorship option which pays the spouse the same monthly amount which would have been received by the deceased; or
38 (2) If the facts do not permit payment under subdivision
39 (1) of this subsection, then the following sum shall be paid to
40 the refund beneficiary of the contributor: The contributor's
41 accumulated contributions up to the year of his or her death
42 plus an amount equal to his or her employee contributions.
43 The latter sum shall emanate from the Employer's
44 Accumulation Fund.

§18-7A-28c. Direct rollovers.

1 (a) This section applies to distributions made on or after
2 January 1, 1993. Notwithstanding any provision of this
3 article to the contrary that would otherwise limit a
4 distributee's election under this system, a distributee may
5 elect, at the time and in the manner prescribed by the board,
6 to have any portion of an eligible rollover distribution paid
7 directly to an eligible retirement plan specified by the
8 distributee in a direct rollover. For purposes of this section,
9 the following definitions apply:

10 (1) "Eligible rollover distribution" means any distribution
11 of all or any portion of the balance to the credit of the
12 distributee, except that an eligible rollover distribution does
13 not include any of the following: (A) Any distribution that is
14 one of a series of substantially equal periodic payments not
15 less frequently than annually made for the life or life
16 expectancy of the distributee or the joint lives or the joint life
17 expectancies of the distributee and the distributee's
18 designated beneficiary, or for a specified period of ten years
19 or more; (B) any distribution to the extent the distribution is
20 required under Section 401(a)(9) of the Internal Revenue
21 Code; (C) the portion of any distribution that is not
22 includable in gross income determined without regard to the
23 exclusion for net unrealized appreciation with respect to
24 employer securities; and (D) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code. For distributions after December 31, 2001,
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
December 31, 2001, 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, as applicable 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.

§18-7A-34. Loans to members.

(a) 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:

(1) Loans shall be made in multiples of $10, the minimal loan being $100 and the maximum being $8,000: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans granted under this section shall not exceed the lesser of the following: (A) $8,000 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 $40 million, the maximum shall not exceed $3,000 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 $40 million 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 the 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 of accumulated contributions 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. A member with an unpaid loan balance who wishes to retire or becomes eligible to receive disability benefits under any provision of this article may have the loan repaid in full by accepting retirement income or disability payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance plus accrued interest, if any, and then converting the remaining of the reserve to a monthly pension or disability benefit payable in the form of the annuity desired by the member.

(5) From his or her monthly salary as a teacher or a nonteacher the member shall pay the loan and interest by
57 deductions which will pay the loan and interest in
58 substantially level payments in not more than sixty nor less
59 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 considers 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 July 1, 2005: 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.

(c) A member who ceases service with an unpaid loan balance will no longer be a member when the unpaid loan balance, plus accrued interest, equals or exceeds the member's accumulated contributions.
AN ACT to amend and reenact § 18-7D-5 and § 18-7D-6 of the Code of West Virginia, 1931, as amended, relating to extending the deadline of the buyback provision provided under the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System; and similarly extending the time for loans for such buyback.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§ 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-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
33 loan may not exceed seven and one-half percent per annum.
34 The total amount borrowed may not exceed forty thousand
35 dollars: Provided, That the loan may not exceed the
36 limitations of the Internal Revenue Code Section 72(p).
37
38 (2) In the event a loan made pursuant to this section is
39 used to pay the Actuarial Reserve or the one and one-half
40 percent contribution, as the case may be, the board shall
41 make any necessary adjustments at the time the loan is made.

42 (3) The board shall make this loan available to any
43 member who has provided to the board by the effective date
44 of the amendments to this section enacted in the 2009 regular
45 legislative session a signed verification of cost for service
46 credit purchase form until the thirtieth day of June, two
47 thousand nine, or no later than ninety days after the
48 postmarked date on a final and definitive contribution
49 calculation from the board, whichever is later.

50 (c) The board shall develop and institute a payroll
51 deduction program for repayment of the loan established in
52 this section.

53 (d) If at least sixty-five percent of actively contributing
54 members of the Teachers' Defined Contribution Retirement
55 System affirmatively elect to transfer to the State Teachers
56 Retirement System within the period provided in section
57 seven of this article:

58 (1) As of the first day of July, two thousand eight, or the
59 first day of August, two thousand eight, as the case may be,
60 the transferred members' contribution rate becomes six
61 percent of his or her salary or wages; and

62 (2) All transferred members who work one hour or more
63 and who make a contribution into the State Teachers
64 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 subsection (c) 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) More than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elected to transfer to the State Teachers Retirement System within the period provided
in section seven of this article. Therefore, any member of the Defined Contribution Retirement System who decides to transfer to the State Teachers Retirement System, calculates his or her service credit in the State Teachers Retirement System 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 and who provided to the board a signed verification of cost for service credit purchase form by the effective date of the amendments to this section enacted in the 2009 regular legislative session shall pay into the State Teachers Retirement System a one and one-half percent contribution by no later than June 30, 2009, or no later than ninety days after the postmarked date on a final and definitive contribution calculation from the board, whichever is later. 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 through June 30, 2009.

(A) For a member contributing to the Defined Contribution Retirement System at any time during the 2008 fiscal year and commencing membership in the State Teachers Retirement System on July 1, 2008, or August 1, 2008, 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 June 30, 2008;

(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 2008 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 July 1, 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(d) 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.

(e) 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 September 1, 2008: Provided, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year 2008 unless the member has provided a written notice to his or her county board of education by July 1, 2008, of his or her intent to retire.

(f) The provisions of section twenty-eight-e, article seven-a of this chapter do not apply to the amendments to this section enacted during the 2009 regular legislative session.
AN ACT to amend and reenact §18-7D-11 of the Code of West Virginia, 1931, as amended, relating to the minimum guarantees provided to members who elected to transfer from the Teachers' Defined Contribution System to the Teachers' Retirement System.

Be it enacted by the Legislature of West Virginia:

That §18-7D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§18-7D-11. Minimum guarantees.

1 (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 June 30, 2008, as stated by the board.
(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 two 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; or

(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 and 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.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31B-1-114, relating to the creation of a criminal penalty for knowingly filing materially false information regarding a limited liability company with the Secretary of State.

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 §31B-1-114, to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-114. Penalty for signing false document.

1 Any person who signs a document required to be filed with the Secretary of State by this chapter which he or she knows is false in any material respect is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.
AN ACT to amend and reenact §15-3A-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §15-3B-1, §15-3B-2, §15-3B-3, §15-3B-4, §15-3B-5 and §15-3B-6 of said code, all relating to the establishment of an alert system for missing cognitively impaired persons; providing for the use of video image recording devices for search purposes during a Silver Alert; providing legislative findings; providing criteria for the activation of a Silver Alert; providing for notice and broadcasting of a Silver Alert; and providing immunity for individuals providing information pursuant to a Silver Alert in good faith.

Be it enacted by the Legislature of West Virginia:

That §15-3A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new article, designated §15-3B-1, §15-3B-2, §15-3B-3, §15-3B-4, §15-3B-5, and §15-3B-6, all to read as follows:

Article
3A. Amber Alert Plan.
3B. Silver Alert Plan.
ARTICLE 3A. AMBER ALERT PLAN.

§15-3A-7. Providing for the use of video image recording devices for search purposes during an Amber Alert or Silver Alert Activation.

(a) The State Police and the Division of Highways shall coordinate a process to utilize all available video recording and monitoring devices for the purpose of monitoring Amber Alert or Silver Alert suspect vehicles. This program shall be called the “Guardian Angel Video Monitoring” Program.

(b) The Secretary of Military Affairs and Public Safety shall also develop a plan to provide for the State Police to monitor and utilize video recording and monitoring devices during an Amber Alert or Silver Alert. This “Guardian Angel Video Monitoring” implementation plan shall include at a minimum, the following:

   (1) Utilization of any state or local video recording and monitoring devices upon agreement with the department, agency or political subdivision in control of the video recording device; and

   (2) Development of policies and initiatives relating to facilitating sharing of information with neighboring states wherein suspect vehicles in Amber Alerts or Silver Alerts may be crossing state lines.

(c) The secretary shall submit the plan to the Joint Committee on Government and Finance no later than December 1, 2008. The plan shall include an analysis of all related costs for equipping and using a statewide video recording and monitoring system during the duration of an Amber Alert and recommendations for any additional legislation or actions necessary to further facilitate the implementation of the “Guardian Angel Video Monitoring” program.
ARTICLE 3B. SILVER ALERT PLAN.

§15-3B-1. Short title.

This article shall be known and may be cited as “Silver Alert Plan”.

§15-3B-2. Findings and declarations relative to "Silver Alert Plan".

(a) The Legislature finds that:

(1) Public alerts can be one of the most effective tools in locating missing cognitively impaired persons;

(2) Law-enforcement officers and other professionals specializing in the field of missing persons agree that the most critical moments in the search for a missing cognitively impaired person are the first few hours immediately following the discovery that the individual is missing, asserting that if he or she is not found within twenty-four hours, it is unlikely that he or she will be found alive or without serious injury. The rapid dissemination of information, including a description of the missing cognitively impaired person, details of how he or she became missing, and of any vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(3) Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering the missing cognitively impaired person;
(4) The most effective method of immediately notifying the public of a missing cognitively impaired person is through the broadcast media; and

(5) All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well being and safety of our cognitively impaired citizenry. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the cognitively impaired person.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover missing cognitively impaired persons, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.

§15-3B-3. Establishment of “Silver Alert” program.

(a) The Secretary of the Department of Military Affairs and Public Safety shall establish “Silver Alert”, a program authorizing the broadcast media, upon notice from the State Police, to broadcast an alert to inform the public of a missing cognitively impaired person. The program shall be a voluntary, cooperative effort between state law-enforcement and the broadcast media.

(b) For the purposes of this article, the term “cognitively impaired” means a person having a deficiency in his or her short-term or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety: Provided, That the cognitive impairment is not caused by the use of alcohol or drugs not legally prescribed by a physician.
(c) The secretary shall notify the broadcast media serving the State of West Virginia of the establishment of “Silver Alert” program and invite their voluntary participation.

(d) The secretary shall submit a plan to the Joint Committee on Government and Finance no later than December 1, 2009. The plan shall include “Silver Alert” activation protocols, evaluation of first responder training requirements and needs as related to cognitively impaired persons, coordination and utilization of established programs and analysis of any costs. The secretary shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the “Silver Alert” program.

§15-3B-4. Activation of Silver Alert.

The following criteria shall be met before the State Police activate the Silver Alert:

(1) A person is believed to be cognitively impaired;

(2) The person is believed to be missing, regardless of circumstance;

(3) A person who has knowledge that the cognitively impaired person is missing has submitted a missing person’s report to the State Police or other appropriate law-enforcement agency;

(4) The missing person may be in danger of death or serious bodily injury;

(5) The missing person is domiciled or believed to be located in the State of West Virginia;

(6) The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar
with the missing person, and the missing person is incapable
of returning to the missing person’s residence without
assistance; and

(7) There is sufficient information available to indicate
that a Silver Alert would assist in locating the missing
person.

§15-3B-5. Notice to participating media; broadcast of alert.

(a) To participate, the media may agree, upon notice from
the State Police via email or facsimile, to transmit
information to the public about a missing cognitively
impaired person that has occurred within their broadcast
service region.

(b) The alerts shall include a description of the missing
cognitively impaired person, such details of the circumstance
surrounding him or her becoming missing, as may be known,
and such other information as the State Police may deem
pertinent and appropriate. The State Police shall in a timely
manner update the broadcast media with new information
when appropriate concerning the missing cognitively
impaired person.

(c) The alerts also shall provide information concerning
how those members of the public who have information
relating to the missing cognitively impaired person may
contact the State Police or other appropriate law-enforcement
agency.

(d) Concurrent with the notice provided to the broadcast
media, the State Police shall also notify the Department of
Transportation, the Division of Highways and the West
Virginia Turnpike Commission of the “Silver Alert” so that
the department and the affected authorities may, if possible,
through the use of their variable message signs, inform the
motoring public that a “Silver Alert” is in progress and may
provide information relating to the missing cognitively impaired person and how motorists may report any information they have to the State Police or other appropriate law-enforcement agency.

(e) The alerts shall terminate upon notice from the State Police.

(f) The secretary shall develop and undertake a campaign to inform law-enforcement agencies about the “Silver Alert” program established under this article.

§15-3B-6. Aid to missing cognitively impaired adult; immunity from civil or criminal liability.

No person or entity who in good faith follows and abides by the provisions of this article is liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false.

CHAPTER 198

(H.B. 3155 - By Delegates Campbell, White and Kominar)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §12-1A-4 and §12-1A-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §12-1A-7 and
§12-1A-8, all relating to the renewal of the West Virginia Small Business Linked Deposit Program; limiting liability of certain state agencies; penalties for violation; and updating certain language within the code.

Be it enacted by the Legislature of West Virginia:

That §12-1A-4 and §12-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §12-1A-7 and §12-1A-8, all to read as follows:

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§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, an authorized workers’ compensation insurance carrier and WORKFORCE West Virginia 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 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, WORKFORCE West Virginia and the authorized workers’ compensation insurance carrier 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-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 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 January 31 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-7. **Liability of state.**

The state, the Treasurer, the Department of Commerce, the West Virginia Development Office and the Small Business Development Center and their employees are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business. Any delay in payment or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible lending institution and the Treasurer.
§12-1A-8. Penalties for violation of article.

(a) Any person who knowingly makes a false statement concerning an application or violates another provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or confined in jail not less than one month nor more than one year.

(b) In addition to the criminal penalties provided in this section, no person who is convicted of a violation of subsection (a) of this section is eligible to participate in the linked deposit program.

CHAPTER 199

(Com. Sub. for S.B. 641 - By Senators K. Facemyer and Prezioso)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24A-2-4b, relating generally to disclosures regarding the origin of solid wastes deposited in commercial landfills and transfer stations in this state; requiring the operator-driver of every solid waste motor carrier who deposits solid waste in a commercial landfill or transfer station to declare in writing, under oath, and to provide to certain entities, the name of the county and state of origin of the solid waste being deposited at the commercial landfill or transfer station; and providing criminal penalties
against an operator-driver or owner of a solid waste motor carrier.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24A-2-4b, to read as follows:

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-4b. Motor carriers transporting solid waste; origin of waste disclosure; penalties.

1 (a) The operator-driver of every solid waste motor carrier vehicle which arrives at a commercial solid waste facility, including, but not limited to, commercial landfills and transfer stations, in this state is required to declare, in writing and under oath, the name of the county and state of origin of the solid waste being deposited at the commercial solid waste facility. The operator-driver of the solid waste motor carrier vehicle shall give a copy of this completed declaration form to the operator of the commercial landfill or of the transfer station, to the West Virginia Public Service Commission and to the county solid waste authority.

12 (b) The Public Service Commission shall prepare and provide commercial solid waste facility operators with a uniform disclosure form for use in effecting this provision.

15 (c) Any operator-driver of a solid waste motor carrier vehicle who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500.

19 (d) Any owner of a solid waste motor carrier vehicle which deposits solid waste in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000.
AN ACT to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to the State Building Code; and requiring the State Fire Commission to promulgate rules pertaining to the State Building Code that are in accordance with certain national and international building codes and standards.

Be it enacted by the Legislature of West Virginia:

That §29-3-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a state building code. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building
9 construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the state building code: 

Provided, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application.

(b) The State Fire Commission has authority to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, regarding building construction, renovation and all other aspects as related to the construction and mechanical operations of a structure. The rules shall be known as the "State Building Code."

(c) The State Fire Commission shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to include the following building energy codes in the State Building Code:

(1) The 2009 edition of the International Energy Conservation Code for residential buildings or other building energy code or codes for residential buildings that meets or exceeds equivalent energy savings; and

(2) The ANSI/ASHRAE/IESNA Standard 90.1-2007 building energy code for commercial buildings or other building energy code or codes for commercial buildings that meets or exceeds equivalent energy savings.

(d) The State Fire Commission has authority to propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the State Building Code, which include, but are not limited to, building code officials, inspectors, plans examiners and home inspectors.
(e) The State Fire Commission has authority to establish advisory boards as it deems appropriate to encourage representative participation in subsequent rule-making from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(f) For the purpose of this section, the term “building code” is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with State Building Code by officials of the state, counties, municipalities and political subdivisions of the state.

(g) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: Provided, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code.

(h) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Commission of its intent.
(i) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(j) The provisions of the State Building Code relating to the construction, repair, alteration, restoration and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of section eight, article one of this chapter or the National Register of Historic Places, pursuant to 16 U.S.C. §470a. Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Commission. Additions constructed on a historic building are not excluded from complying with the State Building Code.

CHAPTER 201

(Com. Sub. for H.B. 2968 - By Delegates Mahan, Sumner, Moye, Wooton and Susman)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 18, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §29-3-5c and §29-3-16d, all relating to requiring the State Fire Commission to establish safety standards for fuel gas systems; requiring the
State Fire Commission to establish safety standards for liquefied petroleum gas systems; and requiring the State Fire Commission to establish safety standards for non-owner or occupant installation, maintenance or service of fuel gas systems in one or two family dwellings.

*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 §29-3-5c and §29-3-16d, all to read as follows:

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

§29-3-5c. Liquified petroleum gas systems.
§29-3-16d. Performance of installation of propane gas system.

§29-3-5c. Liquified petroleum gas systems.

1 (a) The State Fire Commission shall, on or before July 1, 2009, propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide:

5 (1) Standard safe practices for the design, construction, location, installation, maintenance and operation of liquefied petroleum gas systems, as established by the National Fire Protection Association Standard 58; and

9 (2) Training standards and qualifications for persons who install or maintain liquefied petroleum gas systems as established by the National Propane Gas Association’s Certified Employee Training Program.

(b) The State Fire Commission may establish work groups and seek input in the rulemaking process from groups or individuals with an interest in any aspect of the operation or use of liquefied petroleum gas systems.
§29-3-16d. Performance of installation of propane gas systems.

(a) Notwithstanding any statutory or regulatory provisions to the contrary, any person who installs, fuels, maintains or services any fuel gas system to a one or two family dwelling shall comply with this article and the rules promulgated under this article relating to fuel gas systems.

(b) This section does not apply to any person who performs this work on a single family dwelling owned or leased, and occupied by that person. The personal exemption provided in this subsection is the same as the personal exemption provided in the Supervision of Fire Protection Work Act, §29-3D-1, et seq.

CHAPTER 202

(S.B. 587 - By Senator Bowman)

[Passed April 6, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to repeal §29-6-9a of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-6-2 of said code, relating to abolishing the State Personnel Advisory Council.

Be it enacted by the Legislature of West Virginia:

That §29-6-9a of the Code of West Virginia, 1931, as amended, be repealed; and that §29-6-2 of said code be amended and reenacted to read as follows:
ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-2. Definition of terms.

As used in this article, unless the context indicates otherwise, the term:

(a) "Administrator" means any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated;

(b) "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, division, section or office;

(c) "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service;

(d) "Board" means the State Personnel Board created by section six of this article;

(e) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of compensation and benefits may be equitably applied to each position in the group;

(f) "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class;
"Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the higher education governing boards;

"Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system;

"Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

"Director" means the head of the Division of Personnel as appointed by section seven of this article;

"Division" means the Division of Personnel herein created;

"Policy-making position" means a position in which the person occupying it: (1) Acts as an advisor to or formulates plans for the implementation of broad goals for an administrator or the Governor; (2) is in charge of a major administrative component of the agency; and (3) reports directly and is directly accountable to an administrator or the Governor;

"Position" means a particular job which has been classified based on specifications;

"Secretary" means the Secretary of the Department of Administration created in section two, article one, chapter five-f of this code;

"Specification" means a description of a class of position which defines the class, provides examples of work
56 performed and the minimum qualifications required for employment;

58 (p) "Veteran" means any person who has served in the armed forces of the United States of America during World War I (April 6, 1917--November 11, 1918), World War II (December 7, 1941--December 31, 1946), the Korean Conflict (June 27, 1950--January 31, 1955), the Vietnam Conflict (August 5, 1964--May 7, 1975) or in a campaign, expedition or conflict for which a campaign badge has been authorized and received by such person and who has received a discharge under honorable conditions from such service.

CHAPTER 203

(Com. Sub. for S.B. 382 - By Senators Unger, Caruth, Hall and Snyder)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §29-18-6 of the Code of West Virginia, 1931, as amended, relating to the amount of expenditure for rolling stock; and granting additional authority regarding the Maryland Area Regional Commuter.

Be it enacted by the Legislature of West Virginia:

That §29-18-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

1 The West Virginia State Rail Authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose.

4 (a) The authority may:

5 (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 propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement and make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

14 (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 ten, eleven and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County. The location of the principal office of the authority shall be determined by the Governor.

21 (5) Make loans and grants to governmental agencies and persons for carrying out railroad projects by any governmental agency or person and, in accordance with chapter twenty-nine-a of this code, propose rules for legislative approval and procedures for making such loans and grants.

27 (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, railroad projects and, in accordance with chapter twenty-nine-a of this code, propose legislative rules for the use of these projects.

(7) Make available the use or services of any railroad project to one or more persons, one or more governmental agencies or any combination thereof.

(8) Issue Railroad Maintenance Authority bonds and notes and refunding bonds of the state, payable solely from revenues as provided in section ten of this article unless the bonds are refunded by refunding bonds for the purpose of paying any part of the cost of one or more railroad 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 terms and in the manner it considers proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, rail properties and appurtenant rights and interests necessary for carrying out railroad projects.

(11) (A) 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 including, but not limited to, the power to make contracts and agreements in accordance with the provisions set forth in paragraph (B) of this subdivision.

(B) Make and enter into contracts and agreements to acquire rolling stock or equipment with a value of $500,000 or less exempt from the provisions of article three, chapter five-a of this code.
The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which set forth the methods for determining value of rolling stock or equipment to be purchased in accordance with the provisions of paragraph (B) of this subdivision.

(C) Where rolling stock, equipment or trackage of the authority is in need of immediate maintenance, repair or reconstruction in order to avoid a cessation of its operations, economic loss, the inability to provide essential service to customers or danger to authority personnel or the public, the following requirements and procedures for entering into the contract or agreement to remedy the condition shall be in lieu of those provided in article three, chapter five-a of this code or any legislative rule promulgated pursuant thereto:

(i) If the cost under the contract or agreement involves an expenditure of more than $1,000, but $10,000 or less, the authority shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three oral bids made pursuant to the requirements of the contract or agreement.

(ii) If the cost under the contract or agreement, other than one for compensation for personal services, involves an expenditure of more than $10,000, but $100,000 or less, the authority shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three bids, submitted to the authority in writing on letterhead stationery, made pursuant to the requirements of the contract or agreement.

(D) Notwithstanding any other provision of this code to the contrary, a contract or lease for the operation of a railroad project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction
of a railroad project pursuant to section sixteen of this article
is not subject to the provisions of article three, chapter five-a
of this code or any legislative rule promulgated pursuant
thereto and the authority may enter into the contract or lease
or the agreement pursuant to negotiation and upon such terms
and conditions and for a period of time 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 the railroad project.

(E) 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) Appoint a director and employ managers,
superintendents and other employees and retain or contract
with consulting engineers, financial consultants, accountants,
attorneys and 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 from the proceeds of Railroad
Maintenance Authority revenue bonds or notes issued by the
authority, from revenues and funds appropriated for this
purpose by the Legislature or from grants from the federal
government which may be used for such purpose.

(13) Receive and accept from any state or federal agency
grants for or in aid of the construction of any railroad project
or for research and development with respect to railroads 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 the grants
and contributions are made.

(14) Engage in research and development with respect to
railroads.
(15) Purchase fire and extended coverage and liability insurance for any railroad 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 be a member of, and to participate in, the state workers' compensation program.

(16) Charge, alter and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(b) In addition, the authority has the power to:

(1) Acquire rail properties both within and not within the jurisdiction of the Interstate Commerce Commission and rail properties within the purview of the federal Regional Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.

(2) Enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both, of rail properties upon the terms, conditions, rates or rentals that can best effectuate the purposes of this article.

(3) Acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(4) Establish a state plan for rail transportation and local rail services.

(5) Administer and coordinate the state plan.

(6) Provide in the state plan for the equitable distribution of federal rail service continuation subsidies among state, local and regional transportation authorities.
(7) Promote, supervise and support safe, adequate and efficient rail services.

(8) Employ sufficiently trained and qualified personnel for these purposes.

(9) Maintain adequate programs of investigation, research, promotion and development in connection with the purposes and to provide for public participation therein.

(10) Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(11) Comply with the regulations of the Secretary of Transportation of the United States Department of Transportation affecting federal rail service continuation programs.

(12) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 and to qualify for rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.

(c) Additional authority in regard to the Maryland Area Regional Commuter.

(1) The Rail Authority is hereby granted, has and may exercise all aforementioned powers necessary or appropriate to coordinate all activities with the Maryland Transit Administration to assure the continued operation of the Maryland Area Regional Commuter into the eastern panhandle of the state.
AN ACT to amend and reenact §11-6-23 of the Code of West Virginia, 1931, as amended, relating to notice of delinquent taxes by certified mail.

Be it enacted by the Legislature of West Virginia:

That §11-6-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-23. Lien of taxes; notice; collection by suit.

(a) The amount of taxes and levies assessed under this article shall constitute a debt due the state, county, district or municipal corporation entitled thereto, and shall be a lien on all property and assets of the taxpayer within the state.

(b) The lien shall attach December 31, following the commencement of the assessment year, and shall be prior to all other liens and charges.

(c) The auditor shall, between May 1 and May 15 of each year, prepare a list of the taxpayers delinquent in the payment
of the taxes and levies, setting forth their respective addresses
and the amount of state, county, district and municipal taxes
due from each, which list shall be certified by the Auditor to
the Board of Public Works and filed in the office of the
Secretary of State.

(d) The Secretary of State shall preserve the list in his or
her office, and a certificate from him or her that any taxpayer
mentioned in the list is delinquent in the amount of taxes
assessed under this article shall be prima facie evidence
thereof.

(e) Within ten days after the filing of the list, the
Secretary of State shall give written notice of the delinquency
by registered or certified mail to each of the delinquent
taxpayers at his or her, or its, last known post-office address;
and upon the failure of any delinquent taxpayer to pay the
taxes within thirty days from the mailing of the notice.

(f) The Attorney General shall enforce the collection of
the taxes and levies, and for that purpose he or she may
distrain upon any personal property of the delinquent
taxpayer, or a sufficient amount thereof to satisfy the taxes,
including accrued interest, penalties and costs.

(g) The Attorney General may also enforce the lien
created by this section on the real estate of the delinquent
taxpayer by instituting a suit, or suits, in equity in the Circuit
Court of Kanawha County.

(h) In the bill filed in the suit it shall be sufficient to
allege that the defendant or defendants have failed to pay the
taxes and that each of them justly owes the amount of
property taxes, levies and penalties, which amount shall be
computed up to the first day of the month in which the bill
was filed.
(i) No defendant may plead that the Secretary of State failed to give notice as prescribed by this section.

(j) If, upon the hearing of the suit, it shall appear to the court that any defendant has failed to pay the taxes and accrued penalties, the court shall enter a decree against the defendant for the amount due, and if the decree is not paid within ten days, the court shall enter a decree directing a sale of the real estate subject to the lien, or so much as may be necessary to satisfy the taxes, including interest, penalties and costs.

(k) When two or more taxpayers are included in one suit, the court shall apportion the cost among them as it may deem just.

CHAPTER 205

(Com. Sub. for S.B. 540 - By Senators Helmick and McCabe)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §11-61-3 and §11-61-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-10-5e of said code; to amend said code by adding thereto a new section, designated §11-10-25; to amend and reenact §11-13Q-22 of said code; to amend and reenact §11-15-3c of said code; to amend said code by adding thereto a new section, designated §11-15-9m; to amend and reenact §11-21-21, §11-21-22 and §11-21-23 of said code; to amend and reenact §11-24-3a and §11-24-4b of said code; to amend and reenact §18-9A-2a of
said code; and to amend and reenact §21A-6-1c of said code, all relating to taxation; specifying authority of the Tax Commissioner to designate Tax Division documents that may be sent by personal service, United States postal service, regular mail, certified mail or registered mail or other means; specifying statutory burden of proof and presumption against tax exemptions; specifying inflation adjustment for certain economic opportunity tax credit entitlement requirements; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from state consumers sales and use tax on certain vehicles; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from municipal and local consumers sales and service tax and use tax, or special downtown redevelopment district excise tax, or special district excise tax and other sales taxes; authorizing discretionary designation of per se exemptions from the consumers sales and service tax and use tax by the Tax Commissioner; specifying exclusion of federal alternative minimum income taxpayers from eligibility for property tax payment deferment and assessor’s denial of deferment; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the senior citizens’ tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the low-income family tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the refundable tax credit for real property taxes paid in excess of four percent of income; defining terms; specifying treatment of certain income and deduction items for certain regulated investment companies and real estate investment companies; delaying the effective date of alternative definition of levies for general current expenses purposes; authorizing state income tax withholding from the individual’s payment of unemployment compensation; specifying*

[Clerk’s Note: The amendment to the title, heretofore filed with the Clerk, abruptly stops as printed herein.]
Be it enacted by the Legislature of West Virginia:

That §11-6I-3 and §11-6I-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-10-5e of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-10-25; that §11-13Q-22 of said code be amended and reenacted; that §11-15-3c of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9m; that §11-21-21, §11-21-22 and §11-21-23 of said code be amended and reenacted; that §11-24-3a and §11-24-4b of said code be amended and reenacted; that §18-9A-2a of said code be amended and reenacted; and that §21A-6-1c of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.
18. Education.
21A. Unemployment Compensation.

CHAPTER 11. TAXATION.

Article

6I. Senior Citizen Property Tax Payment Deferral Act.
13Q. Economic Opportunity Tax Credit.
15. Consumers Sales and Service Tax.

ARTICLE 6I. SENIOR CITIZEN PROPERTY TAX PAYMENT DEFERMENT ACT.

§11-6I-3. Property tax payment deferment.
§11-6I-5. Determination; notice of denial of application for deferment.

§11-6I-3. Property tax payment deferment.

1 (a) The following homesteads shall qualify for the deferment provided in subsection (c) 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 the 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) A homestead which is owned, in whole or in part, by any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from the deferment provided in this article.

(c) (1) For tax years commencing on or after January 1, 2009, 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 $300 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 the 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
§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 January 1, 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.

(c) The assessor shall deny any application made by or for an owner who is required to pay the federal alternative minimum income tax in the current tax year. The application may contain an affirmation, prescribed by the Tax Commissioner, whereby the applicant shall indicate whether the applicant is required to pay the federal alternative minimum income tax in the current tax year. Failure to
truthfully indicate whether the applicant is required to pay the federal alternative minimum income tax in the current tax year shall be subject to the applicable penalties of articles nine and ten of this chapter.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5e. Service of notice.

§11-10-25. Taxpayer must show tax exemption applies; presumption.

(a) The burden of proving that a tax exemption applies to any tax administered by the Tax Commissioner shall be upon the taxpayer. Tax exemptions administered by the Tax
ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.

(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 $3,000 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, That each new job:
(1) Pays at least $32,000 annually. Beginning January 1, 2010, and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the $32,000 amount during that calendar year. This amount is prescribed by increasing the $32,000 figure by the cost-of-living adjustment for that calendar year;

(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 $32,000 annually, or less than the amount prescribed by the commissioner pursuant to subdivision (1) of this subsection, whichever is higher, 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.

The employer having obtained entitlement to the credit shall not be required to raise wages of employees currently employed in jobs upon which the initial credit was based by reason of the cost-of-living adjustment.

(b) For purposes of this section, the following definitions apply:

(1) Cost-of-living adjustment. -- For purposes of subsection (a) of this section, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2009.

(2) Consumer price index for any calendar year. -- For purposes of subdivision (1) of this subsection, the consumer
price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

(3) Consumer price index. -- For purposes of subdivision (2) of this subsection, the term "federal consumer price index" means the most recent consumer price index for all urban consumers published by the United States Department of Labor.

(4) Rounding. -- If any increase under subdivision (1) of this subsection is not a multiple of $50, the increase shall be rounded to the next lowest multiple of $50.

c) 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.

d) The tax credit authorized by this section may be taken in addition to any credits allowable under article thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-r or thirteen-s of this chapter.

e) 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 $3,000 for each net job lost.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.
§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

§11-15-9m. Discretionary designation of per se exemptions.

§11-15-3c. **Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.**

1 (a) Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents shall be subject to the consumers sales tax imposed by this article.

5 (b) **Rate of tax on motor vehicles.** -- Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, the rate of tax on the sale and use of a motor vehicle shall be five percent of its sale price, as defined in section two, article fifteen-b of this chapter: Provided, That so much of the sale price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-a of this code has been paid by the purchaser shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor vehicle be new or used.

16 (c) **Motor vehicles purchased out of state.** -- Notwithstanding this article or article fifteen-a to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by section one, article fifteen-a of this chapter, within this state, regardless of whether the vehicle was purchased in a state other than West Virginia.
(d) **Definition of sale.** -- Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, for purposes of this section, "sale", "sales" or "selling" means any transfer or lease of the possession or ownership of a motor vehicle for consideration, including isolated transactions between individuals not being made in the ordinary course of repeated and successive business and also including casual and occasional sales between individuals not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions.

(e) **Definition of motor vehicle.** -- For purposes of this section, "motor vehicle" means every propellable device in or upon which any person or property is or may be transported or drawn upon a highway including, but not limited to: Automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes; except that the term "motor vehicle" does not include: Modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy; devices operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this code; trucks, truck tractors and road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or greater: Provided, That notwithstanding
the provisions of section nine, article fifteen, chapter eleven
of this code, the exemption from tax under this section for
mobile equipment as defined in section one, article one,
chapter seventeen-a of this code; special mobile equipment
defined in section one, article one, chapter seventeen-a of this
code; Class B trucks, truck tractors and road tractors
registered at a gross weight of fifty-five thousand pounds or
more; and Class C trailers, semitrailers, full trailers, pole
trailers and converter gear having weight of two thousand
pounds or greater does not subject the sale or purchase of the
vehicle to the consumer sales and service tax imposed by
section three of this article.

(f) Exemptions. -- Notwithstanding any other provision
of this code to the contrary, the tax imposed by this section
shall not be subject to any exemption in this code other than
the following:

(1) The tax imposed by this section does not apply to any
passenger vehicle offered for rent in the normal course of
business by a daily passenger rental car business as licensed
under the provisions of article six-d, chapter seventeen-a of
this code. For purposes of this section, a daily passenger car
means a motor vehicle having a gross weight of eight
thousand pounds or less and is registered in this state or any
other state. In lieu of the tax imposed by this section, there
is hereby imposed a tax of not less than $1 nor more than
$1.50 for each day or part of the rental period. The
Commissioner of Motor Vehicles shall propose an
emergency rule in accordance with the provisions of article
three, chapter twenty-nine-a of this code to establish this tax.

(2) The tax imposed by this section does not apply where
the motor vehicle has been acquired by a corporation,
partnership or limited liability company from another
corporation, partnership or limited liability company that is
a member of the same controlled group and the entity
transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by this section. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(3) The tax imposed by this section does not apply where motor vehicle has been acquired by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U. S. C.§501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the Bureau of Senior Services existing under the provisions of article five, chapter sixteen of this code.

(4) The tax imposed by this section does not apply to any active duty military personnel stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from the date the person returns to this state.

(5) The tax imposed by this section does not apply to motor vehicles acquired by registered dealers of this state for resale only.

(6) The tax imposed by this section does not apply to motor vehicles acquired by this state or any political subdivision thereof or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property.

(7) The tax imposed by this section does not apply to motor vehicles acquired by an urban mass transit authority,
as defined in article twenty-seven, chapter eight of this code, or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code for the purpose of providing mass transportation to the public at large or designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(8) The tax imposed by this section does not apply to the registration of a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the Commissioner of Motor Vehicles may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the Commissioner of Motor Vehicles may require to show bona fide residency in this state; and

(D) Makes application to the Division of Motor Vehicles for a title and registration and pays all other fees required by chapter seventeen-a of this code within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article.

(9) On and after January 1, 2009, the tax imposed by this section does not apply to Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more or to Class C trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of two thousand pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued
without the payment of the tax imposed by this section, then
before the owner may obtain registration for the vehicle at a
gross weight less than fifty-five thousand pounds, the owner
shall surrender to the commissioner the exempted
registration, the exempted certificate of title and pay the tax
imposed by this section based upon the current market value
of the vehicle.

(10) The tax imposed by this section does not apply to
vehicles leased by residents of West Virginia. On or after
January 1, 2009, a tax is imposed upon the monthly payments
for the lease of any motor vehicle leased under a written
contract of lease by a resident of West Virginia for a
contractually specified continuous period of more than thirty
days, which tax is equal to five percent of the amount of the
monthly payment, applied to each payment, and continuing
for the entire term of the initial lease period. The tax shall be
remitted to the Division of Motor Vehicles on a monthly
basis by the lessor of the vehicle. Leases of thirty days or
less are taxable under the provisions of this article and article
fifteen-a of this chapter without reference to this section.

(g) Division of Motor Vehicles to collect.--
Notwithstanding any provision of this article, article fifteen-a
and article ten of this chapter to the contrary, the Division of
Motor Vehicles shall collect the tax imposed by this section:
Provided, That such tax is imposed upon the monthly
payments for the lease of any motor vehicle leased by a
resident of West Virginia, which tax is equal to five percent
of the amount of the monthly payment, applied to each
payment, and continuing for the entire term of the initial
lease period. The tax shall be remitted to the Division of
Motor Vehicles on a monthly basis by the lessor of the
vehicle.

(h) Dedication of tax to highways. -- Notwithstanding
any provision of this article or article fifteen-a of this chapter
to the contrary, all taxes collected pursuant to this section,
after deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasury and expended by the Commissioner of Highways for design, maintenance and construction of roads in the state highway system.

(i) Legislative rules; emergency rules. -- Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Commissioner of Motor Vehicles shall promulgate legislative rules explaining and implementing this section, which rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and should include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair market value rather than its purchase price. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the State Register before June 15, 2008, those rules may be promulgated as emergency legislative rules as provided in article three, chapter twenty-nine-a of this code.

(j) Notwithstanding any other provision of this code, effective January 1, 2009, no municipal sales or use tax or local sales or use tax or special downtown redevelopment district excise tax or special district excise tax shall be imposed under article twenty-two, chapter seven of this code or article thirteen, chapter eight of this code or article thirteen-b of said chapter or article thirty-eight of said chapter or any other provision of this code, except this section, on sales of motor vehicles as defined in this article or on any tangible personal property excepted or exempted from tax under this section. Nothing in this subsection shall be construed to prevent the application of the municipal business and occupation tax on motor vehicle retailers and leasing companies.
§11-15-9m. Discretionary designation of per se exemptions.

1 Notwithstanding any other provision of this code, the Tax Commissioner may, by rule, specify those exemptions authorized in this article or in other provisions of this code or applicable federal law for which exemption certificates or direct pay permits are not required.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens' tax credit for property tax paid on first $10,000 of taxable assessed value of a homestead in this state; tax credit for property tax paid on the first $20,000 of value for property tax years after December 31, 2006.

§11-21-22. Low-income family tax credit.

§11-21-23. Refundable credit for real property taxes paid in excess of four percent of income.

§11-21-21. Senior citizens' tax credit for property tax paid on first $10,000 of taxable assessed value of a homestead in this state; tax credit for property tax paid on the first $20,000 of value for property tax years after December 31, 2006.

(a) Allowance of credit. --

(1) A low-income person who is allowed a $20,000 homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem property taxes paid on up to the first $10,000 of taxable assessed value of the homestead for property tax years that begin on or after January 1, 2003, except as provided in subdivision (2) of this subsection.

(2) For tax years beginning on or after January 1, 2007, a low-income person who is allowed a $20,000 homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section
three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem property taxes paid on up to the first $20,000 of taxable assessed value of the homestead for property tax years that begin on or after January 1, 2007: Provided, That for tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section.

(3) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than $10.

(4) The credit for each property tax year shall be claimed by filing a claim for refund within three years after the due date for the personal income tax return upon which the credit is first available.

(b) Terms defined. --

For purposes of this section:

(1) "Low income" means federal adjusted gross income for the taxable year that is one hundred fifty percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined annually by the United States Secretary of Health and Human Services.

(2) (A) For tax years beginning before January 1, 2007, "taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against not more than $10,000 of the taxable assessed value of a homestead that are paid during the calendar year determined after application of
any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after January 1, 2003, except as provided in paragraph (B) of this subdivision.

(B) For tax years beginning on or after January 1, 2007, "taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against not more than $20,000 of the taxable assessed value of a homestead that are paid during the calendar year determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after January 1, 2007.

(c) Legislative rule. --

The Tax Commissioner shall propose a legislative rule for promulgation as provided in article three, chapter twenty-nine-a of this code to explain and implement this section.

(d) Confidentiality. --

The Tax Commissioner shall utilize property tax information in the statewide electronic data processing system network to the extent necessary for the purpose of administering this section, notwithstanding any provision of this code to the contrary.

§11-21-22. Low-income family tax credit.

In order to eliminate West Virginia personal income tax on families with incomes below the federal poverty guidelines and to reduce the West Virginia personal income tax on families with incomes that are immediately above the federal poverty guidelines, there is hereby created a
nonrefundable tax credit, to be known as the low-income family tax credit, against the West Virginia personal income tax. The low-income family tax credit is based upon family size and the federal poverty guidelines. The low-income tax credit reduces the tax imposed by the provisions of this article on families with modified federal adjusted gross income below or near the federal poverty guidelines:

Provided, That for tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section.

§11-21-23. Refundable credit for real property taxes paid in excess of four percent of income.

(a) For the tax years beginning on or after January 1, 2008, any homeowner living in his or her homestead shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of real property taxes paid in excess of four percent of their income. If the refundable credit provided in this section exceeds the amount of taxes imposed by this article, the state Department of Revenue shall refund that amount to the homeowner.

(b) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than $10.

(c) The credit for each property tax year shall be claimed by filing a claim for refund within twelve months after the real property taxes are paid on the homestead.

(d) For the purposes of this section:

(1) "Gross household income" is defined as federal adjusted gross income plus the sum of the following:
(A) Modifications in subsection (b), section twelve of this article increasing federal adjusted gross income;

(B) Federal tax-exempt interest reported on federal tax return;

(C) Workers' compensation and loss of earnings insurance; and

(D) Nontaxable Social Security benefits; and

(2) For the tax years beginning before January 1, 2008, "real property taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against the homestead that are paid during the calendar year and determined after any application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for property tax years that begin on or after January 1, 2008.

(e) A homeowner is eligible to benefit from this section or section twenty-one of this article, whichever section provides the most benefit as determined by the homeowner. No homeowner may receive benefits under both this section and section twenty-one of this article during the same taxable year. For tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section. Nothing in this section denies those entitled to the homestead exemption provided in section three, article six-b of this chapter.

(f) No homeowner may receive a refundable tax credit imposed by this article in excess of $1,000. This amount shall be reviewed annually by the Legislature to determine if an adjustment is necessary.
ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.
§11-24-4b. Dividends paid deduction to be added back in determining net income for captive real estate investment trusts and regulated investment companies; deductible intangible expenses and deductible interest paid to be added back in determining net income of certain entities.

§11-24-3a. Specific terms defined.

1 (a) For purposes of this article:

2 (1) Aggregate effective rate of tax.-- The term "aggregate effective rate of tax" shall mean the sum of the effective rates of tax imposed by a state or United States possession or any combination thereof on a related member.

3 (2) 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.

4 (3) Captive real estate investment trust. -- The term "captive real estate investment trust" shall mean a real estate investment trust, the shares or beneficial interests of which:

5 (A) Are not regularly traded on an established securities market and:

6 (B) Are more than fifty percent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly or constructively, by a single entity that is:
(i) Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

(ii) Not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended;

(C) For purposes of applying subparagraph (i), paragraph (B) of this subdivision, the following entities are not considered an association taxable as a corporation:

(i) Any real estate investment trust as defined in Section 856 of the Internal Revenue Code of 1986, as amended, other than a "captive real estate investment trust";

(ii) Any qualified real estate investment trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified real estate investment trust subsidiary of a "captive real estate investment trust";

(iii) Any listed Australian property trust, meaning an Australian unit trust registered as a "managed investment scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market, or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of the trust; or

(iv) Any qualified foreign entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:

(1) At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real
Ch. 205] TAXATION 1615

54 estate assets as defined in Section 856(c)(5)(B) of the Internal
55 Revenue Code of 1986, as amended, thereby including shares
56 or certificates of beneficial interest in any real estate
57 investment trust, cash and cash equivalents and United States
58 government securities;
59
60 (2) The entity is not subject to tax on amounts distributed
61 to its beneficial owners or is exempt from entity-level
62 taxation;
63
64 (3) The entity distributes at least eighty-five percent of its
65 taxable income as computed in the jurisdiction in which it is
66 organized to the holders of its shares or certificates of
67 beneficial interest on an annual basis;
68
69 (4) Not more than ten percent of the voting power or
70 value in the entity is held directly or indirectly or
71 constructively by a single entity or individual or the shares or
72 beneficial interests of the entity are regularly traded on an
73 established securities market; and
74
75 (5) The entity is organized in a country which has a tax
76 treaty with the United States.
77
78 (D) A real estate investment trust that is intended to be
79 regularly traded on an established securities market, and that
80 satisfies the requirements of Section 856(a)(5) and (6) of the
81 U. S. Internal Revenue Code by reason of Section 856(h)(2)
82 of the Internal Revenue Code is not considered a captive real
83 estate investment trust within the meaning of this section.
84
85 (E) A real estate investment trust that does not become
86 regularly traded on an established securities market within
87 one year of the date on which it first becomes a real estate
88 investment trust is not considered not to have been regularly
89 traded on an established securities market, retroactive to the
90 date it first became a real estate investment trust, and shall
file an amended return reflecting the retroactive designation for any tax year or part year occurring during its initial year of status as a real estate investment trust. For purposes of this section, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of Section 856 of the Internal Revenue Code and has elected to be treated as a real estate investment trust pursuant to Section 856(c)(1) of the Internal Revenue Code.

(4) 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 (j) or (k), section thirteen-a of this article in determining the taxpayer's share of the net business income or loss apportionable to this state.

(5) 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.

(6) Compensation. -- The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(7) Corporation. -- "Corporation" means any corporation as defined by the laws of this state or organization of any kind treated as a corporation for tax purposes under the laws of this state, wherever located, which if it were doing business in this state would be 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.

(8) 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 regulations promulgated thereunder.

(9) 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 June 20, 1863. Every other corporation is a foreign corporation.

(10) Effective rate of tax. -- The term "effective rate of tax" means, as to any state or United States possession, the maximum statutory rate of tax imposed by the state or possession on a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or United States possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction
shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by the credit or similar adjustment.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) **Intangible expense.** -- The term "intangible expense" includes: (A) Expenses, losses and costs for, related to or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property to the extent those amounts are allowed as deductions or costs in determining taxable income before operating loss deductions and special deductions for the taxable year under the Internal Revenue Code; (B) amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code to the extent those expenses and costs are directly or indirectly for, related to or in connection with the expenses, losses and costs referenced in subdivision (A) of this subsection; (C) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (D) royalty, patent, technical and copyright fees; (E) licensing fees; and (F) other similar expenses and costs.

(19) **Intangible property.** -- "Intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets.

(20) **Interest expense.** -- "Interest expense" means amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of
determining taxable income under the Internal Revenue Code.

(21) "Internal Revenue Code" means the Internal Revenue Code as defined in section three of this article, as amended and in effect for the taxable year and without regard to application of federal treaties unless expressly made applicable to states of the United States.

(22) Nonbusiness income.-- The term "nonbusiness income" means all income other than business income.

(23) Ownership. -- In determining the ownership of stock, assets or net profits of any person, the constructive ownership of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, shall apply.

(24) "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.

(25) 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.

(26) 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.
302  (27) 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.

306  (28) Qualified regulated investment company. -- The term "qualified regulated investment company" means any regulated investment company other than a regulated investment company where more than fifty percent of the voting power or value of the beneficial interests or share of which are owned or controlled, directly or indirectly, constructively or otherwise, by a single entity that is:

313  (A) Subject to the provision of subchapter C, chapter 1, subtitle A, Title 26 of the United States Code, as amended;

315  (B) Not exempt from federal income tax pursuant to the provision of Section 501 of the Internal Revenue Code of 1986, as amended; and

318  (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: Provided, That a regulated invested company, the shares of which are held in a segregated asset account of a life insurance corporation (as described in Section 817 of the Internal Revenue Code of 1986, as amended), shall be treated as a qualified regulated investment company.

326  (29) 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.

330  (30) 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.
(31) Related entity. -- "Related entity" means: (A) A stockholder who is an individual or a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; or (C) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(32) Related member. -- "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is: (A) A related entity; (B) a component member as defined in subsection (b), Section 1563 of the Internal Revenue Code; (C) a person to or from whom there is attribution of stock ownership in accordance with subsection (e), Section 1563 of the Internal Revenue Code; or (D) a person that, notwithstanding its form or organization, bears the same relationship to the taxpayer as a person described in subdivisions (A) through (C), inclusive, of this subsection.
(33) Sales.-- The term "sales" means all gross receipts of the taxpayer that are "business income" as defined in this section.

(34) 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.

(35) 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.

(36) 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.

(37) Tax Commissioner.-- The term "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(38) Tax haven. -- The term "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.

(39) Taxpayer. -- The term "taxpayer" means any person
subject to the tax imposed by this article.

(40) This code. -- The term "this code" means the Code
of West Virginia, 1931, as amended.

(41) This state. -- The term "this state" means the State
of West Virginia.

(42) "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.

(43) "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.

(44) 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.

(45) Valid business purpose. -- "Valid business purpose" means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for a business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the
taxpayer or the entry by the taxpayer into new business markets.

(b) *Effective date.* -- The amendments to this section made in the year 2009 are retroactive and are effective for tax years beginning on and after January 1, 2009.

§11-24-4b. *Dividends paid deduction to be added back in determining net income for captive real estate investment trusts and regulated investment companies; deductible intangible expenses and deductible interest paid to be added back in determining net income of certain entities.*

(a) The dividend paid deduction otherwise allowed by federal law in computing net income of a real estate investment trust that is subject to federal income tax shall be added back in computing the tax imposed by this article if the real estate investment trust is a captive real estate investment trust.

(b) The dividend paid deduction otherwise allowed by 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 investment company is a qualified regulated investment company as defined in this article.

(c) *Intangible expenses otherwise deductible to be added back for certain taxpayers.* --

(1) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible intangible expense directly or indirectly paid, accrued or incurred in connection with one or more direct or indirect transactions with one or more related members.
(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the intangible expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state in an amount equal to the higher of the tax paid by the related member with respect to the portion of its income representing the intangible expense paid, accrued or incurred by the taxpayer, or the tax that would have been paid by the related member with respect to that portion of its income if: (A) That portion of its income had not been offset by expenses or losses; or (B) the tax liability had not been offset by a credit or credits. The credit determined shall be multiplied by the apportionment factor of the taxpayer in this state. However, in no case shall the credit exceed the taxpayer's liability in this state attributable to the net income taxed as a result of the adjustment required by subdivision (1) of this subsection.

(3) (A) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply to the portion of the intangible expense that the taxpayer establishes by clear and convincing evidence meets both of the following requirements: (i) The related member during the same taxable year directly or indirectly paid, accrued or incurred a portion to a person that is not a related member; and (ii) the transaction giving rise to the intangible expense between the taxpayer and the related member was undertaken for a valid business purpose.

(B) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the Tax Commissioner that: (i) The related member was subject to tax on its net income in this state or another state or possession of the United States or some combination
thereof; (ii) the tax base for said tax included the intangible expense paid, accrued or incurred by the taxpayer; and (iii) the aggregate effective rate of tax applied to the related member is no less than the tax rate imposed under this article.

(C) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The intangible expense was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (ii) the related member's income from the transaction was subject to a comprehensive income tax treaty between that country and the United States; (iii) the related member's income from the transaction was taxed in that country at a tax rate at least equal to that imposed by this state; and (iv) the intangible expense was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be reflected accurately.

(d) Interest expense otherwise deductible to be added back for certain taxpayers. --

(1) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible interest paid, accrued or incurred to a related member during the taxable year.
(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the interest expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state equal to the higher of the tax paid by the related member with respect to the portion of its income representing the interest expense paid, accrued or incurred by the taxpayer, or the tax that would have been paid by the related member with respect to that portion of its income if: (A) That portion of its income had not been offset by expenses or losses; or (B) the tax liability had not been offset by a credit or credits. The credit determined shall be multiplied by the apportionment factor of the taxpayer in this state. However, in no case shall the credit exceed the taxpayer's liability in this state attributable to the tax imposed under this article as a result of the adjustment required by subdivision (1) of this subsection.

(3) (A) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence, of the type and in the form determined by the commissioner, that: (i) The transaction giving rise to interest expense between the taxpayer and the related member was undertaken for a valid business purpose; and (ii) the interest expense was paid, accrued or incurred using terms that reflect an arm's length relationship.

(B) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The related member was subject to tax on its net income in this state or another state or possession of the United States or some combination thereof; (ii) the tax base for said tax included the interest expense
paid, accrued or incurred by the taxpayer; and (iii) the aggregate effective rate of tax applied to the related member is no less than the statutory rate of tax applied to the taxpayer under this chapter.

(C) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The interest expense is paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (ii) the related member's income from the transaction is subject to a comprehensive income tax treaty between that country and the United States; (iii) the related member's income from the transaction is taxed in that country at a tax rate at least equal to that imposed by this state; and (iv) the interest expense was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be properly reflected.

(e) Nothing in this subsection shall be construed to limit or negate the commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(f) Effective date. -- The amendments to this section made in the year 2009 are retroactive and are effective for tax years beginning on and after January 1, 2009.
CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2a. Definition of levies for general current expense purposes.

(a) For the purposes of this section only, "property" means only Classes II, III and IV properties exclusive of natural resources property as defined in section ten, article one-c, chapter eleven of this code, personal property, farmland, managed timberland, public utility property or any other centrally assessed property provided in paragraphs (A), (B), (C) and (D), subdivision (2), subsection (a), section five, article one-c, chapter eleven of this code: Provided, That nothing in this subsection may be construed to require that levies for general current expense purposes be applied only to those properties that are included in this definition.

(b) For the purposes of this section only, the median ratio of the assessed values to actual selling prices in the assessment ratio study applicable to the immediately preceding fiscal year shall be used as the indicator to determine the percentage market value that properties are being assessed at.

(c) Notwithstanding any other provision of this section or section two of this article, effective July 1, 2013, for any county that is not assessing property at least at fifty-four percent of market value, "levies for general current expense purposes” means ninety-eight percent of the levy rate for county boards of education set by the Legislature pursuant to section six-f, article eight, chapter eleven of this code.

(d) Any county that receives additional state aid due to its using a percentage less than ninety-eight percent in the calculation of levies for general current expense purposes,
shall report to the state board how the additional state aid was used. The state board shall compile the reports from all the county boards into a single report, and shall report to the Legislative Oversight Commission on Education Accountability how the county boards used this additional state aid. The report shall be made annually as soon as practical after the end of each fiscal year.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1c. Voluntary withholding program.

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised by the appropriate bureau employee that:

1. Unemployment compensation is subject to federal and state income tax;

2. Requirements exist pertaining to estimated tax payments;

3. The individual may elect to have federal and state income tax deducted and withheld from the individual's payment of unemployment compensation at the appropriate federal and state withholding rate; and

4. The individual may change a previously elected withholding status.

(b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the appropriate federal or state taxing authority as payment of income tax.
(c) The commissioner shall follow all procedures specified by the United States Department of Labor, federal Internal Revenue Service and the West Virginia State Tax Division pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld in accordance with the priorities established in rules developed by the commissioner.

(e) Effective date. -- The amendments made to this section regarding withholding for state income tax shall be effective for payments made on and after January 1, 2010.

CHAPTER 206

(Com. Sub. for S.B. 258 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §11-8-26 of the Code of West Virginia, 1931, as amended, relating to unlawful expenditures by a local fiscal body; and clarifying that a local fiscal body or its duly authorized officials shall not be penalized for certain deficits relating to the unfunded actuarial accrued liability of the West Virginia Retiree Health Benefit Trust Fund and annual required employer contributions.

Be it enacted by the Legislature of West Virginia:
That §11-8-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-26. Unlawful expenditures by local fiscal body.

1  (a) Except as provided in sections fourteen-b, twenty-five-a and twenty-six-a of this article, a local fiscal body shall not expend money or incur obligations:

4   (1) In an unauthorized manner;

5   (2) For an unauthorized purpose;

6   (3) In excess of the amount allocated to the fund in the levy order; or

8   (4) In excess of the funds available for current expenses.

9  (b) Notwithstanding the foregoing and any other provision of law to the contrary, a local fiscal body or its duly authorized officials may not be penalized for a casual deficit which does not exceed its approved levy estimate by more than three percent: Provided, That such casual deficit is satisfied in the levy estimate for the succeeding fiscal year: Provided, however, That in calculating a deficit for purposes of this section, account shall not be taken of any amount for which the local fiscal body may be liable for the unfunded actuarial accrued liability of the West Virginia Retiree Health Benefit Trust Fund or any amount allocated to the local fiscal body as an employer annual required contribution that exceeds the minimum annual employer payment component of the contribution, all as provided under article sixteen-d, chapter five of this code.
AN ACT to amend and reenact §11-13A-3b of the Code of West Virginia, 1931, as amended; and to amended and reenact §11-13V-4 of said code, all relating to removing a severance tax on timber for tax years 2010 through 2012, inclusive.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-13V-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3b. Imposition of tax on privilege of severing timber.

1 (a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

6 (b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be three and twenty-two
hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: Provided, That as to timber produced after December 31, 2006 the rate of the tax imposed in subsection (a) of this section shall be one and twenty-two hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. -- The tax imposed by this section shall apply to all persons severing timber in this state and shall be in addition to all other taxes imposed by law.

(d) Elimination of tax.-- Beginning in the tax year 2010 and continuing for two consecutive tax years thereafter, the tax imposed by this section is discontinued.

ARTICLE 13V. WORKERS’ COMPENSATION DEBT REDUCTION ACT.

§11-13V-4. Imposition of tax.

(a) Imposition of additional tax on privilege of severing coal. -- Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an additional annual severance tax for exercising the privilege after November 30, 2005. The tax shall be $.56 per ton and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance with rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment before July 1, 2005, the rule may be
promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed with respect to the severance and production of coal in this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

(b) **Imposition of additional tax on privilege of severing natural gas.** -- For the privilege of engaging or continuing within this state in the business of severing natural gas for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax. The rate of this additional tax shall be $.047 per mcf of natural gas and the measure of the tax is natural gas produced after November 30, 2005, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to natural gas produced after November 30, 2005.

(c) **Imposition of additional tax on privilege of severing timber.** -- For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to timber produced after November 30, 2005: Provided, That during the period of discontinuance of the tax as provided in subsection (d), section three-b, article
thirteen-a of this chapter, the additional tax imposed by this subsection shall be determined as provided in this subsection in the same manner as if the tax described under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to the provisions of subsection (g) of this section.

(d) No pyramiding of tax burden. -- Each ton of coal and each mcf of natural gas severed in this state after the effective date of the taxes imposed by this section shall be included in the measure of a tax imposed by this section only one time.

(e) Effect on utility rates. -- The Public Service Commission shall, upon the application of any public utility that, as of the effective date of the taxes imposed by this section, is not currently making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs because the mechanism historically used to make such periodic adjustments is suspended by an order of the commission, allow such utility to defer, for future recovery from its customers, any increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas severed in this state and utilized in the production of electricity generated or produced in this state and sold to customers in this state; coal and natural gas severed in this state and utilized in the production of electricity not generated or produced in this state that is sold to customers in this state; and natural gas severed in this state that is sold to customers in this state.

(f) Dedication of new taxes. -- The net amount of all moneys received by the Tax Commissioner from collection of the taxes imposed by this section, including any interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this code, shall be deposited in the Workers’ Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code. As used in this section, “net amount of all taxes received by the Tax Commissioner” means the gross amount
received by the Tax Commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this article, including the amount of any interest on the overpayment amount due the taxpayer under the provisions of section fourteen, article ten of this chapter.

(g) *Sunset expiration date of taxes.* -- The new taxes imposed by this section shall expire and not be imposed with respect to privileges exercised on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (1) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired, or payment of the debt service provided for; and (2) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.Expiration of the taxes imposed in this section as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

CHAPTER 208

*(Com. Sub. for H.B. 2535 - By Delegate Wooton)*

[Amended and again passed May 27, 2009, as a result of the objections of the Governor; in effect July 1, 2009.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13Z-1, §11-13Z-2 and §11-13Z-3, all relating to providing for a tax credit for solar energy systems; and requiring the Tax Commissioner to promulgate rules for claiming and applying the tax credit.
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 §11-13Z-1, §11-13Z-2 and §11-13Z-3, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13Z. RESIDENTIAL SOLAR ENERGY TAX CREDIT.

§11-13Z-1. Amount of credit.

1 Any taxpayer who installs or causes to be installed a solar energy system on property located in this state and owned by the taxpayer and used as a residence after July 1, 2009, shall be allowed a credit against the taxes imposed in article twenty-one of this chapter in an amount equal to thirty percent of the cost to purchase and install the system up to a maximum amount of $2,000.


1 In order to receive the credit for a solar energy system on residential property, the system must use solar energy to:

3 (1) Generate electricity;

4 (2) Heat or cool a structure; or

5 (3) Provide hot water for use in the structure or to provide solar process heat: Provided, That this does not include a swimming pool, hot tub or any other energy storage medium that has a function other than storage: Provided, however, That the system used to provide hot water must derive at least fifty percent of its energy to heat or cool from the sun.
§11-13Z-3. Carryover credit allowed; Tax Commissioner to promulgate rules.

1 If the amount of the credit exceeds the taxpayer’s liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to the provisions of article twenty-one of this chapter to each of the next taxable years unless sooner used.

7 The State Tax Commissioner shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code regarding the applicability, method of claiming of the credit, recapture of the credit and documentation necessary to claim the credit allowed by this article. No taxpayer shall take a credit pursuant to this article for a solar energy system installed after July 1, 2013.

CHAPTER 209

(Com. Sub. for H.B. 2999 - By Delegates White, Campbell, Kominar, Doyle and Carmichael)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §11-15-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15A-18 of said code; and to amend and reenact §11-15B-21, §11-15B-24, §11-15B-28 and §11-15B-32 of said code, all relating to the streamlined sales and use tax agreement and the West Virginia consumers sales and service tax and use tax; providing relief
from liability in specified circumstances; administrative exemptions; the requirements of certified service providers and the effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15A-18 of said code be amended and reenacted; and that §11-15B-21, §11-15B-24, §11-15B-28 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

Article
15. Consumers sales and service tax.
15A. Use tax.
15B. Streamlined sales and use tax administration act.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-6. Vendor must show sale or service exempt; presumption.

(a) The burden of proving that a sale or service was exempt from the tax shall be upon the vendor, unless the vendor takes from the purchaser an exemption certificate signed by and bearing the address of the purchaser and setting forth the reason for the exemption and substantially in the form prescribed by the tax commissioner.

(b) To prevent evasion, it is presumed that all sales and services are subject to the tax until the contrary is clearly established.

ARTICLE 15A. USE TAX.

§11-15A-18. Seller must show sale not at retail; presumption.

(a) The burden of proving that a sale was not taxable shall be upon the seller, unless, the seller, in good faith, takes
from the purchaser a certificate signed by and bearing the
address of the purchaser setting forth the reason for
exemption of the sale from imposition of the tax.

(b) Notwithstanding subsection (a) of this section, a seller
is relieved of the good faith requirement for the taking of an
exemption certificate in accordance with article fifteen-b of
this chapter, and any rule promulgated by the Tax
Commissioner.

(c) To prevent evasion it is presumed that all proceeds are
subject to the tax until the contrary is clearly established.

(d) This certificate shall be substantially in the form
prescribed by the Tax Commissioner.

ARTICLE 15B. STREAMLINED SALES AND USE TAX
ADMINISTRATION ACT.


(a) General. -- The Tax Commissioner shall provide
sellers with as much advance notice as practicable of a rate
change for a tax levied by article fifteen or fifteen-a of this
chapter.

(b) Effective date of rate changes. -- Unless the
Legislature expressly provides a different effective date for
a rate change, the change shall take effect on the first day of
the calendar quarter that begins on or after the effective date
of the act of the Legislature that makes the rate change and
that is more than sixty days after passage of the bill making
the rate change.
(c) Notification of changes to tax base. -- The tax commissioner shall make reasonable efforts to notify sellers of legislative changes to the tax base and to amendments to sales and use tax rules, as that term is defined in section two, article one, chapter twenty-nine-a of this code.

(d) Liability of seller.

1. Failure of a seller to receive notice or failure of the state to provide notice of a rate change or a change in the tax base, or to limit the effective date of a rate change, does not relieve the seller of its obligation to collect sales or use taxes for this state.

2. Failure of the Tax Commissioner to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change shall relieve the seller of liability for failing to collect tax at the new rate if:

   (A) The seller collected tax at the immediately preceding effective rate; and

   (B) The seller's failure to collect at the newly effective rate does not extend beyond thirty days after the date of the enactment of the new rate.

(e) Notwithstanding subdivision (d)(2), if the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate this relief does not apply.


(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 December 31, 2007, 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 the 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.

(1) 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.

§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 and proper identification of taxing jurisdictions;

(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 for documentation of the correct assignment of taxing jurisdictions; 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-32. Effective date.*

(a) The provisions of this article, as amended or added
during the regular legislative session in the year 2003, shall
take effect January 1, 2004, 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
2003, shall take effect January 1, 2004, 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 2004, shall apply to all
sales made on or after the date of passage in the year 2004.

(d) The provisions of this article, as amended or added
during the regular legislative session in the year 2008, 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.

(e) The provisions of this article, as amended or added
during the regular legislative session in the year 2009, 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.

*Clerk's Note:* This section was also amended by SB 533 (Chapter 210), which
passed subsequent to this act.
AN ACT to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15B-2 and §11-15B-32 of said code, all relating to the definitions of "health care provider" and "drug"; and exempting from the consumers sales and service tax drugs purchased by veterinarians to be dispensed upon prescription for the medical treatment of animals.

Be it enacted by the Legislature of West Virginia:

That §11-15-9i of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15B-2 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

Article 15. Consumers Sales and Service Tax.
15B. Sales and Use Tax Administration.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical goods, mobility enhancing equipment and prosthetic devices.
(a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase by a health care provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices, all as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article.

(b) For purposes of this exemption, "health care provider" means any person licensed to prescribe drugs, durable medical goods, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this section, the term "health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services or veterinary services: Provided, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.

(c) This section shall be effective July 1, 2007.

ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.


§11-15B-32. Effective date.


(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 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
(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;
1660  TAXATION  [Ch. 210

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  (xxxi) 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; or

(C) Intended to affect the structure or any function of the body. The amendment to this subdivision enacted during the 2009 regular legislative session shall apply to sales made after July 1, 2009.

(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
247 (D) Is not worn in or on the body.

248 (18) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

251 (19) "Eligible property" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in this state.

254 (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.

260 (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.

265 (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.

271 (23) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

274 (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

(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.
"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.

"Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

"Personal service" includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(B) "Prepared food" in subparagraph (ii), paragraph (A) of this subdivision 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
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. However, 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.

(46) "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.

(47) "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.

(48) (A) "Sales price" means the measure subject to the tax levied under article 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.

(B) "Sales price" does not include:

(i) Discounts, including cash, term or coupons that are
not reimbursed by a third party that are allowed by a seller
and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit
extended on the sale of personal property, goods or services,
if the amount is separately stated on the invoice, bill of sale
or similar document given to the purchaser; or

(iii) Any taxes legally imposed directly on the consumer
that are separately stated on the invoice, bill of sale or similar
document given to the purchaser.

(C) "Sales price" shall include consideration received by
the seller from third parties if:

(i) The seller actually receives consideration from a party
other than the purchaser and the consideration is directly
related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price
reduction or discount through to the purchaser;
(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(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;
533 (C) Paintbrushes for artwork;
534 (D) Sketch and drawing pads; and
535 (E) Watercolors.

536 (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:

542 (A) Reference books;
543 (B) Reference maps and globes;
544 (C) Textbooks; and
545 (D) Workbooks.

546 (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:

552 (A) Computer storage media; diskettes, compact disks;
553 (B) Handheld electronic schedulers, except devices that are cellular phones;
554 (C) Personal digital assistants, except devices that are cellular phones;
557 (D) Computer printers; and
"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:

- Binders;
- Book bags;
- Calculators;
- Cellophane tape;
- Blackboard chalk;
- Compasses;
- Composition books;
- Crayons;
- Erasers;
- Folders; expandable, pocket, plastic and manila;
- Glue, paste and paste sticks;
- Highlighters;
- Index cards;
- 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
tangible personal property as required under the programs or
agreements.

(56) "Soft drink" means nonalcoholic beverages that
contain natural or artificial sweeteners. "Soft drinks" do not
include beverages that contain milk or milk products, soy,
rice or similar milk substitutes or greater than fifty percent of
vegetable or fruit juice by volume.

(57) "Sport or recreational equipment" means items
designed for human use and worn in conjunction with an
athletic or recreational activity that are not suitable for
general use. "Sport or recreational equipment" are mutually
exclusive of and may be taxed differently than apparel within
the definition of "clothing", "clothing accessories or
equipment" and "protective equipment". The following list
contains examples and is not intended to be an all-inclusive
list. "Sport or recreational equipment" shall include:

(A) Ballet and tap shoes;

(B) Cleated or spiked athletic shoes;
635 (C) Gloves, including, but not limited to, baseball, bowling, boxing, hockey and golf;
636
637 (D) Goggles;
638 (E) Hand and elbow guards;
639 (F) Life preservers and vests;
640 (G) Mouth guards;
641 (H) Roller and ice skates;
642 (I) Shin guards;
643 (J) Shoulder pads;
644 (K) Ski boots;
645 (L) Waders; and
646 (M) Wetsuits and fins.

647 (58) "State" means any state of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

649 (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.

654 (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 of this chapter 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.

§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year 2003, shall take effect January 1, 2004, 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 2003, shall take effect January 1, 2004, 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 2004 shall apply to all sales made on or after the date of passage in the year 2004.

(d) The provisions of this article, as amended or added during the regular legislative session in the year 2008, 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.

(e) The provisions of this article, as amended or added during the 2009 regular legislative session, 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.

*CLERK’S NOTE: This section was also amended by HB 2999 (Chapter 209), which passed prior to this act.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-91, relating to exempting tax-exempt organizations engaged in retail sales of clothing and clothing accessories from the consumers sales tax; authorizing the Tax Commissioner to designate the exemption as a per se exemption, thus exemption certificates would not be required.

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 §11-15-91, to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-91. Exemption for Sales of clothing and clothing accessories by tax-exempt organizations.

1 (a) Sales of clothing and clothing accessories by organizations that are exempt from federal income taxes under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, and that have annual revenue obtained from the sales of less than $40,000, are
exempt from the tax imposed under this article and article fifteen-a of this chapter: Provided, That the purpose of the sale is to obtain revenue for the activities and functions of the organization, and the revenue obtained is exempt from federal income tax and actually expended for that purpose: Provided, however, That the clothing and clothing accessories sold are acquired or obtained by donation only, without compensation, remuneration or consideration to the donor. The Tax Commissioner may, by rule, specify the exemption authorized in this section to be a "per se" exemption for which exemption certificates are not required.

CHAPTER 212

(Com. Sub. for H.B. 2401 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed April 11, 2009; in effect ninety days from passage.] [Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §11-21-3 of the Code of West Virginia, 1931, as amended, relating to the expiration of the alternative minimum tax; and providing for the expiration of the alternative minimum tax for tax years beginning on and after January 1, 2010.

Be it enacted by the Legislature of West Virginia:

That §11-21-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 21. PERSONAL INCOME TAX.

§11-21-3. Imposition of tax; persons subject to tax.

(a) *Imposition of tax.*

(1) *Primary tax.* -- A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate and trust.

(2) *Minimum tax.* -- In addition to the primary tax imposed by this section, there is imposed a minimum tax, which shall be the excess, if any, by which an amount equal to twenty-five percent of any federal minimum tax or alternative minimum tax for the taxable year exceeds the primary tax imposed by this section for the taxable year.

(3) *Effective date.* -- The minimum tax herein imposed and made effective on and after April 1, 1983, shall expire, be nullified and of no further force or effect whatsoever for tax years beginning on and after January 1, 2010.

(b) *Partners and partnerships.* -- A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities.

(c) *Associations taxable as corporations.* -- An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) *Exempt trusts and organizations.* -- A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether...
subject to federal income tax on unrelated business taxable income).

(e) Cross references. -- For definitions of West Virginia taxable income of:

(1) Resident individual, see section eleven. 

(2) Resident estate or trust, see section eighteen. 

(3) Nonresident individual, see section thirty. 

(4) Nonresident estate or trust, see section thirty-eight.

CHAPTER 213

(S.B. 329 - By Senators Tomblin, Mr. President, and Caruth) 
[By Request of the Executive]

[Passed March 23, 2009; in effect from passage.] 
[Approved by the Governor on April 1, 2009.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of "federal adjusted gross income" and certain other terms in the West Virginia Personal Income Tax Act in order for the definitions to conform with the Internal Revenue Code's definitions.

Be it enacted by the Legislature of West Virginia:
ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2007, but prior to February 18, 2009, 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 February 18, 2009, 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 2009 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2010, 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 214

(S.B. 410 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 23, 2009; in effect from passage.]
[Approved by the Governor on April 1, 2009.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of "federal taxable income" and certain other terms used in the West Virginia Corporation Net Income Tax Act in order for the
definitions to conform with the Internal Revenue Code's definitions.

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 December 31, 2007, but prior to February 18, 2009, 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 February 18, 2009, 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 2009 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2010, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 215

(Com. Sub. for S.B. 724 - By Senators Helmick, McCabe, Plymale and Kessler)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §11-27-16 of the Code of West Virginia, 1931, as amended, relating to the health care provider tax; providing a definition of the term "physicians’ services"; and specifying legislative intent as to activities that qualify as physicians’ services.

Be it enacted by the Legislature of West Virginia:
That §11-27-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-16. Imposition of tax on providers of physicians' services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing physicians' services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care-related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be two percent of the gross receipts derived by the taxpayer from furnishing physicians' services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for physicians' services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and
amounts realizable from third-party payors under contractual agreements.

(3) "Physicians' services" means and is limited to those services furnished by a physician within the scope of the practice of medicine or osteopathy, as defined by the laws of this state, whether furnished in the physician’s office, the recipient's home, a hospital, a skilled nursing facility or any other location.

(A) The term "physicians' services" includes those professional services directly furnished by a physician in the scope of his or her employment by a hospital. Other services rendered in conjunction with hospital-employed physicians' services, such as the use of hospital facilities, staff, equipment, drugs and supplies ordinarily furnished by a hospital, are not considered physicians' services pursuant to this section: Provided, That hospitals that own and operate freestanding physician offices or primary care clinics in office buildings or other locations separate and apart from a hospital whereby employed physicians provide services ordinarily provided by physicians in a freestanding physician's office may class all revenue from such services as physicians’ services. The status of a physician as a hospital employee shall be determined in accordance with criteria established under the United States Internal Revenue Code and United States Treasury regulations issued pursuant thereto.

(B) Any other service provided by a hospital may not be classified as physicians’ services, notwithstanding the fact that such services are provided under the direct or indirect supervision of a physician who is not an employee of the hospital or provided or performed by a physician who holds privileges at the hospital or who works as an independent contractor for the hospital or for any other entity for the provision of health care services.
(C) The amendment to this definition enacted during the 2009 regular legislative session is intended to clarify the intent of the Legislature as to the activities that qualify as physicians' services.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

CHAPTER 216

(Com. Sub. for S.B. 600 - By Senators Green, Deem, McCabe, Foster, Kessler and Plymale)

[Passed April 10, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to continuing and reimposing a special reclamation tax on clean coal mined; and providing for legislative review of the tax every two years.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.
(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than $1,000 nor more than $5,000 for each acre or fraction of an acre: *Provided,* That the minimum amount of bond furnished for any type of reclamation bonding shall be $10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: *Provided, however,* That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c)(1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral
35 securities or certificates as follows: Bonds of the United
36 States or its possessions of the Federal Land Bank or of the
37 Homeowners' Loan Corporation; full faith and credit general
38 obligation bonds of the State of West Virginia or other states
39 and of any county, district or municipality of the State of
40 West Virginia or other states; or certificates of deposit in a
41 bank in this state, which certificates shall be in favor of the
42 department. The cash deposit or market value of the
43 securities or certificates shall be equal to or greater than the
44 penal sum of the bond. The secretary shall, upon receipt of
45 any deposit of cash, securities or certificates, promptly place
46 the same with the Treasurer of the State of West Virginia
47 whose duty it is to receive and hold the deposit in the name
48 of the state in trust for the purpose for which the deposit is
49 made when the permit is issued. The operator making the
50 deposit is entitled, from time to time, to receive from the
51 State Treasurer, upon the written approval of the secretary,
52 the whole or any portion of any cash, securities or certificates
53 so deposited, upon depositing with him or her in lieu thereof
54 cash or other securities or certificates of the classes specified
55 in this subsection having value equal to or greater than the
56 sum of the bond.

57 (2) The secretary may approve an alternative bonding
58 system if it will: (A) Reasonably assure that sufficient funds
59 will be available to complete the reclamation, restoration and
60 abatement provisions for all permit areas which may be in
61 default at any time; and (B) provide a substantial economic
62 incentive for the permittee to comply with all reclamation
63 provisions.

64 (d) The secretary may accept the bond of the applicant
65 itself without separate surety when the applicant
66 demonstrates to the satisfaction of the secretary the existence
67 of a suitable agent to receive service of process and a history
of financial solvency and continuous operation sufficient for
authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral
rights to interfere with the present operator in the discharge
of the operator's obligations to the state for the reclamation of
lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance
with the provisions of section twenty-three of this article.

(g) The Special Reclamation Fund previously created is
continued. The Special Reclamation Water Trust Fund is
created within the State Treasury into and from which
moneys shall be paid for the purpose of assuring a reliable
source of capital to reclaim and restore water treatment
systems on forfeited sites. The moneys accrued in both
funds, any interest earned thereon and yield from investments
by the State Treasurer or West Virginia Investment
Management Board, are reserved solely and exclusively for
the purposes set forth in this section and section seventeen,
article one of this chapter. The funds shall be administered
by the secretary who is authorized to expend the moneys in
both funds for the reclamation and rehabilitation of lands
which were subjected to permitted surface mining operations
and abandoned after August 3, 1977, where the amount of the
bond posted and forfeited on the land is less than the actual
cost of reclamation, and where the land is not eligible for
abandoned mine land reclamation funds under article two of
this chapter. The secretary shall develop a long-range
planning process for selection and prioritization of sites to be
reclaimed so as to avoid inordinate short-term obligations of
the assets in both funds of such magnitude that the solvency
of either is jeopardized. The secretary may use both funds
for the purpose of designing, constructing and maintaining
water treatment systems when they are required for a
TAXATION

complete reclamation of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in both funds to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

(h)(1) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply. Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: Provided, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the Special Reclamation Program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators
by which those operators pay an increased tax into the
Special Reclamation Fund in exchange for a maximum per-
acre bond that is less than the maximum established in
subsection (a) of this section;

(B) Determine the feasibility of creating an incremental
bonding program by which operators can post a reclamation
bond for those areas actually disturbed within a permit area,
but for less than all of the proposed disturbance and obtain
incremental release of portions of that bond as reclamation
advances so that the released bond can be applied to
approved future disturbance; and

(C) Determine the feasibility for sites requiring water
reclamation by creating a separate water reclamation security
account or bond for the costs so that the existing reclamation
bond in place may be released to the extent it exceeds the
costs of water reclamation.

(4) If the secretary determines that the alternative
program, the incremental bonding program or the water
reclamation account or bonding programs reasonably assure
that sufficient funds will be available to complete the
reclamation of a forfeited site and that the Special
Reclamation Fund will remain fiscally stable, the secretary is
authorized to propose legislative rules in accordance with
article three, chapter twenty-nine-a of this code to implement
an alternate program, a water reclamation account or bonding
program or other funding mechanisms or a combination
thereof.

(I) This special reclamation tax shall be collected by the
State Tax Commissioner in the same manner, at the same
time and upon the same tonnage as the minimum severance
tax imposed by article twelve-b, chapter eleven of this code
is collected: Provided, That under no circumstance shall the
special reclamation tax be construed to be an increase in
either the minimum severance tax imposed by said article or
the severance tax imposed by article thirteen of said chapter.

(j) Every person liable for payment of the special
reclamation tax shall pay the amount due without notice or
demand for payment.

(k) The Tax Commissioner shall provide to the secretary
a quarterly listing of all persons known to be delinquent in
payment of the special reclamation tax. The secretary may
take the delinquencies into account in making determinations
on the issuance, renewal or revision of any permit.

(l) The Tax Commissioner shall deposit the moneys
collected with the Treasurer of the State of West Virginia to
the credit of the Special Reclamation Fund and Special
Reclamation Water Trust Fund.

(m) At the beginning of each quarter, the secretary shall
advise the State Tax Commissioner and the Governor of the
assets, excluding payments, expenditures and liabilities, in
both funds.

(n) To the extent that this section modifies any powers,
duties, functions and responsibilities of the department that
may require approval of one or more federal agencies or
officials in order to avoid disruption of the federal-state
relationship involved in the implementation of the federal
Surface Mining Control and Reclamation Act, 30 U. S. C.
§1270 by the state, the modifications will become effective
upon the approval of the modifications by the appropriate
federal agency or official.
AN ACT to amend and reenact §18-30-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §36-8-13 of said code; and to amend and reenact §44-1-28 of said code, all relating to the West Virginia State Treasurer’s Office; transferring a one time sum of $8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund; setting $1 million as the amount to be transferred annually from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Fund until the actuary certifies there are sufficient funds to pay out all contracts; authorizing investment of the Unclaimed Property Trust Fund; and facilitating payments by the state where the owner has died.

Be it enacted by the Legislature of West Virginia:

That §18-30-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §36-8-13 of said code be amended and reenacted; and that §44-1-28 of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
36. Estates and Property.
44. Administration of Estates and Trusts.

CHAPTER 18. EDUCATION.
ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-6. West Virginia prepaid tuition trust.

(a) The “Prepaid Tuition Trust Fund” is continued within the accounts held by the State Treasurer for administration by the board.

(b) The Prepaid Tuition Trust Fund shall continue to receive all payments from account owners on behalf of beneficiaries of prepaid tuition contracts or from any other source, public or private. Earnings derived from the investment of moneys in the Prepaid Tuition Trust Fund shall remain in the Prepaid Tuition Trust Fund held in trust in the same manner as payments, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the prepaid tuition plan.

(c) The corpus, assets and earnings of the Prepaid Tuition Trust Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the Prepaid Tuition Plan does not constitute a debt of the state, but is solely an obligation of the Prepaid Tuition Trust Fund. The state has no obligation to any designated beneficiary or any other person as a result of the Prepaid Tuition Plan. All amounts payable from the Prepaid Tuition Trust Fund are limited to amounts available in the Prepaid Tuition Trust Fund.

(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.
(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a prepaid tuition contract by the board, its employees and agents.

(f) The Prepaid Tuition Plan and the Prepaid Tuition Trust Fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan and after payment of all fees, charges, expenses and penalties, the assets of the Prepaid Tuition Trust Fund are paid to current account owners, to the extent possible, on a pro rata basis as their interests may appear, and any assets presumed abandoned are reported and remitted to the unclaimed property administrator in accordance with the Uniform Unclaimed Property Act in article eight, chapter thirty-six of this code. Any assets then remaining in the Prepaid Tuition Trust Fund shall revert to the State General Revenue Fund.

(g) Effective March 8, 2003, the prepaid tuition plan is closed to new contracts until the Legislature authorizes the plan to reopen. Closing the plan to new contracts does not mean the Prepaid Tuition Plan is closed and does not affect any Prepaid Tuition Plan contracts in effect on March 8, 2003. All contract owners shall continue to pay any amounts due, including without limitation monthly installments, penalties and fees. Earnings derived from the investment of moneys in the Prepaid Tuition Trust Fund shall continue to accrue to the fund until the fund is closed in accordance with this article.

(h) The board shall continue to have the actuarial soundness of the Prepaid Tuition Trust Fund evaluated annually.

(i)(1) On or before December 1, 2003, and each year thereafter, the chairperson of the board shall submit to the
Governor, the President of the Senate, the Speaker of the House of Delegates, Joint Committee on Government and Finance and the unclaimed property administrator a report certified by an actuary of the actuarial status of the Prepaid Tuition Trust Fund at the end of the fiscal year immediately preceding the date of the report.

(2) The Prepaid Tuition Trust Escrow Fund is continued in the State Treasury to guarantee payment of Prepaid Tuition Plan contracts. The board shall invest the Prepaid Tuition Trust Escrow Fund in accordance with the provisions of this article in fixed income securities, and all earnings of the escrow fund shall accrue to the escrow fund and be available for expenditure in accordance with this section.

(A) On July 1, 2009, the unclaimed property administrator shall transfer the amount of $8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(B) On or before December 15 of each fiscal year and continuing until the actuary certifies there are sufficient funds to pay out all contracts, the unclaimed property administrator shall transfer the amount of $1 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(3) In the event the money in the Prepaid Tuition Trust Fund is insufficient to cover the amount of money needed to meet the current obligations of the Prepaid Tuition Trust Fund, the board may withdraw from the Prepaid Tuition Trust Escrow Fund the amount of money needed to meet current obligations of the Prepaid Tuition Trust Fund.

(4) Notwithstanding any provision of this code to the contrary, the Governor, after consultation with the Budget Office of the Department of Revenue, may request an appropriation to the board in the amount of the deficiency to
meet the current obligations of the Prepaid Tuition Trust Fund, in the budget presented to the next session of the Legislature for its consideration. The Legislature is not required to make any appropriation pursuant to this subsection, and the amount of the deficiency is not a debt or a liability of the state.

(5) As used in this section, “current obligations of the Prepaid Tuition Trust Fund” means amounts required for the payment of contract distributions or other obligations of the Prepaid Tuition Trust Fund, the maintenance of the fund, and operating expenses for the current fiscal year.

(6) Nothing in this subsection creates an obligation of state general revenue funds or requires any level of funding by the Legislature.

(7) After the Prepaid Tuition Trust Fund has been closed and all moneys paid in accordance with this section, any moneys remaining in the Prepaid Tuition Trust Escrow Fund shall be transferred to the General Revenue Fund and the account closed.

(i) To fulfill the charitable and public purpose of this article, neither the earnings nor the corpus of the Prepaid Tuition Trust Fund is subject to taxation by the state or any of its political subdivisions.

(k) Notwithstanding any provision of this code to the contrary, money in the Prepaid Tuition Trust Fund is exempt from creditor process and not subject to attachment, garnishment or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge; and is not subject to seizure, taking, appropriation or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.
(l) The provisions of this section may not be construed to interfere with the operation of the savings plan authorized under this article.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under section twelve of this article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.
(c) The Unclaimed Property Trust Fund is continued within the State Treasury. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are available for expenditure in accordance with this article. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

(d) (1) On July 1, 2009, the unclaimed property administrator shall transfer the amount of $8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(2) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator shall transfer the sum of $1 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund, until the actuary certifies there are sufficient funds to pay out all contracts.

(e) On or before June 1, 2007, the unclaimed property administrator shall transfer the amount of $2 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the deferred compensation matching program for state employees. On or before June 1, 2008, the unclaimed property administrator shall transfer the amount of $1 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the matching program.

(f) After transferring any money required by subsections (d) and (e) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.
CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

(a) When the State of West Virginia, any of its political subdivisions, the United States or any employer owes wages, salary, pension payments or money allowed for burial expenses to a decedent, upon whose estate there has been no qualification, and the amount owed does not exceed $5,000, the State of West Virginia, any of its political subdivisions, the United States or the decedent’s employer, after one hundred and twenty days from the death of the decedent, may pay the amount owed to the decedent’s surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia.

(b) When the State Treasurer holds property in accordance with article eight, chapter thirty-six of this code on behalf of a decedent upon whose estate there has been no qualification, and the amount of the property is $5,000 or less, the Treasurer may remit the property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent, then to the distributees of the decedent under the laws of the State of West Virginia. When the State Treasurer holds property in accordance with article eight, chapter thirty-six of this code on behalf of a decedent whose estate is closed or has no present qualification and a valid will or an affidavit naming the decedent’s distributees has been filed with the appropriate probate jurisdiction, the Treasurer may remit the property to the distributees as reflected in the will, or in the absence of a will, as established by the affidavit, in accordance with the laws of descent and distribution.
(Com. Sub. for S.B. 246 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §21A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code; to amend and reenact §21A-6-1, §21A-6-3 and §21A-6-10 of said code; and to amend and reenact §23-2C-3 of said code, all relating generally to unemployment compensation; requiring establishment of employer violator system; providing for notice and due process; defining certain terms; providing that the maximum weekly benefit rate shall not increase or decrease under certain circumstances; providing for an alternative base wage and authorizing benefits thereunder; requiring notice to employer when employee quits for health reasons; requiring written certification from physician within thirty days; classifying certain conduct as gross misconduct; providing that an employee who voluntarily retires is not eligible for unemployment; requiring the Insurance Commissioner transfer certain funds for the benefit of the Unemployment Trust Fund; and authorizing the transfer of certain funds by the Insurance Commissioner.
Be it enacted by the Legislature of West Virginia:

That §21A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code be amended and reenacted; that §21A-6-1, §21A-6-3 and §21A-6-10 of said code be amended and reenacted; and that §23-2C-3 of said code be amended and reenacted, all to read as follows:

Chapter 21A. Unemployment Compensation.
23. Workers’ Compensation.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§21A-1-4. Workforce West Virginia created; divisions within Workforce West Virginia created; certain terms defined; employer violator system.

(a) There is continued an agency designated Workforce West Virginia, composed of:

1. Division of Unemployment Compensation;
2. Division of Employment Service;
3. Division of Workforce Development;
4. Division of Research, Information and Analysis; and
5. Any other divisions or units that the executive director determines are necessary.
(b) Wherever within this chapter the term "department", "bureau" or "fund" is used, it shall be taken to mean Workforce West Virginia unless otherwise indicated. Any reference in this code to the Bureau of Employment Programs means Workforce West Virginia. Any reference in this code to the Commissioner of the Bureau of Employment Programs or Employment Security means the Executive Director of Workforce West Virginia.

(c) Workforce West Virginia shall be administered pursuant to subsection (b), section one, article two, chapter five-f of this code.

(d) The Executive Director of Workforce West Virginia shall establish an employer violator system to identify individuals and employers who are in default on any assessment, surcharge, tax or penalty owed to the fund. The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the executive director, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the fund or has entered into and remains in compliance with a repayment agreement. The employer violator system shall work cooperatively with all state agencies to maintain an accurate, up-to-date list of violators which shall be available in electronic format and online for agencies and the public. Before an employer is added to the violator list, he or she shall be given notice and an opportunity for an expedited administrative hearing. The executive director shall propose for promulgation emergency and legislative rules to effectuate this subsection.

ARTICLE 1A. DEFINITIONS.

§21A-1A-5. Base period; alternative base period.
§21A-1A-6. Base period employer; alternative base period employer.
§21A-1A-28. Wages; average annual wage; threshold wage.
§21A-1A-5. Base period; alternative base period.

(a) "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.

(b) "Alternative base period" means the last four completed calendar quarters immediately preceding the first day of the individual’s benefit year.

§21A-1A-6. Base period employer; alternative base period employer.

"Base period employer" and "alternative base period employer" mean any employer who in the base period or alternative base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.


"Base period wages" and "alternative base period wages" mean wages paid to an individual during the base period or alternative base period by all the individual’s base period or alternative base period employers.

§21A-1A-28. Wages; average annual wage; threshold wage.

(a) "Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than $20 each month and which are required to be reported to the employer by the employee, bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service. The term “wages” includes remuneration
for service rendered to the state as a member of the state National Guard or Air National Guard only when serving on a temporary basis pursuant to a call made by the Governor under sections one and two, article one-d, chapter fifteen of this code.

(b) The term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to $8,000 or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this section, the term "employment" includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his or her computation of base period wages: Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of $8,000 or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage herein referred to. In applying such limitation on the amount of remuneration that
is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term "wages" as contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to include remuneration in excess of $8,000 or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage paid to an individual by an employer under the federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this chapter or his or her predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the federal Unemployment Tax Act;

(2) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual in its employ or any of his or her dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;
(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under Section 3101 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of sixty-five if he or she did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his or her period of
training or service in the armed forces of the United States by
an employer by which such individual was formerly
employed; and

(10) Vacation pay, severance pay or savings plans
received by an individual before or after becoming totally or
partially unemployed: Provided, That the term totally or
partially unemployed does not include: (A) Employees who
are on vacation by reason of the request of the employees or
their duly authorized agent, for a vacation at a specific time,
and which request by the employees or their agent is acceded
to by their employer; (B) employees who are on vacation by
reason of the employer's request provided they are so
informed at least ninety days prior to such vacation; or (C)
employees who are on vacation by reason of the employer's
request where such vacation is in addition to the regular
vacation and the employer compensates such employee at a
rate equal to or exceeding their regular daily rate of pay
during the vacation period.

(c) The reasonable cash value of remuneration in any
medium other than cash shall be estimated and determined in
accordance with rules prescribed by the commissioner,
except for remuneration other than cash for services
performed in agricultural labor and domestic service.

(d) "Average annual wage" means the state's average
annual wage which is computed on or before September 30
of the year immediately preceding the rate year and is the
total remuneration paid by employers as reported on
contribution reports on or before that date with respect to all
employment during the four consecutive calendar quarters
ending on June 30 of that year divided by the average
monthly number of individuals performing services in
employment during the same four calendar quarters as
reported on the contribution reports.
“Threshold wage” means the wage amount the employer pays unemployment taxes on for each person in his or her employ during a calendar year. On and after the effective date of the amendment and reenactment of this chapter by the Legislature in 2009, the threshold wage will be $12,000:

Provided, That when the moneys in the unemployment fund reach $220 million on February 15 of any year, the threshold wage thereafter will be reduced to $9,000: Provided, however, That each year thereafter the threshold wage shall increase or decrease by the same percentage that the state’s average wage increases or decreases.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-3. Disqualification for benefits.

§21A-6-10. Benefit rate-Total unemployment; annual computation and publication of rates.

§21A-6-1. Eligibility qualifications.

An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

(1) He or she has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner;

(2) He or she has made a claim for benefits in accordance with the provisions of article seven of this chapter and has furnished his or her Social Security number, or numbers if he or she has more than one such number;

(3) He or she is able to work and is available for full-time work for which he or she is fitted by prior training or experience and is doing that which a reasonably prudent person in his or her circumstances would do in seeking work;

(4) He or she has been totally or partially unemployed during his or her benefit year for a waiting period of one
week prior to the week for which he or she claims benefits for total or partial unemployment;

(5) He or she has within his or her base period been paid wages for employment equal to not less than $2,200 and must have earned wages in more than one quarter of his or her base period or, if he or she is not eligible under his or her base period, has within his or her alternative base period been paid wages for employment equal to not less than $2,200 and must have earned wages in more than one quarter of his or her alternative base period; and

(6) He or she participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the commissioner, unless the commissioner determines that:

(a) The individual has completed such services; or

(b) There is justifiable cause for the claimant's failure to participate in such services.

§21A-6-3. Disqualification for benefits.

Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

(1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision, an individual shall not be deemed to have left his or her most recent work
10 voluntarily without good cause involving fault on the part of
11 the employer, if such individual leaves his or her most recent
12 work with an employer and if he or she in fact, within a
13 fourteen-day calendar period, does return to employment
14 with the last preceding employer with whom he or she was
15 previously employed within the past year prior to his or her
16 return to workday, and which last preceding employer, after
17 having previously employed such individual for thirty
18 working days or more, laid off such individual because of
19 lack of work, which layoff occasioned the payment of
20 benefits under this chapter or could have occasioned the
21 payment of benefits under this chapter had such individual
22 applied for such benefits. It is the intent of this paragraph to
23 cause no disqualification for benefits for such an individual
24 who complies with the foregoing set of requirements and
25 conditions. Further, for the purpose of this subdivision, an
26 individual shall not be deemed to have left his or her most
27 recent work voluntarily without good cause involving fault
28 on the part of the employer, if such individual was compelled
29 to leave his or her work for his or her own health-related
30 reasons and notifies the employer prior to leaving the job or
31 within two business days after leaving the job or as soon as
32 practicable and presents written certification from a licensed
33 physician within thirty days of leaving the job that his or her
34 work aggravated, worsened or will worsen the individual's
35 health problem.

36 (2) For the week in which he or she was discharged from
37 his or her most recent work for misconduct and the six weeks
38 immediately following such week; or for the week in which
39 he or she was discharged from his or her last thirty-day
40 employing unit for misconduct and the six weeks
41 immediately following such week. Such disqualification
42 shall carry a reduction in the maximum benefit amount equal
43 to six times the individual's weekly benefit. However, if the
44 claimant returns to work in covered employment for thirty
45 days during his or her benefit year, whether or not such days
are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that:

If he or she were discharged from his or her most recent work for one of the following reasons, or if he or she were discharged from his or her last thirty days employing unit for one of the following reasons: Gross misconduct consisting of willful destruction of his or her employer's property; assault upon the person of his or her employer or any employee of his or her employer; if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter sixty-a of this code without a valid prescription, or being under the influence of any controlled substance, as defined in said chapter without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code; arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross misconduct, he or she shall be and remain disqualified for benefits until he or she has thereafter worked for at least thirty days in covered employment: Provided, That for the purpose of this subdivision, the words "any other gross misconduct" shall include, but not be limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from such act or acts.

(3) For the week in which he or she failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his or her customary
self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his or her acceptance. Such disqualification shall carry a reduction in the maximum benefit amount equal to four times the individual's weekly benefit amount.

(4) For a week in which his or her total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he or she was last employed, unless the commissioner is satisfied that he or she: (1) Was not participating, financing or directly interested in such dispute; and (2) did not belong to a grade or class of workers who were participating, financing or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his or her plant or operation or dismisses his or her employees in order to force wage reduction, changes in hours or working conditions. For the purpose of this subdivision if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that part of the stoppage of work which exists after a period of four weeks after the termination of the labor dispute did not exist because of the labor dispute; and in that event the burden shall be upon the employer or other interested party to show otherwise.

(5) For a week with respect to which he or she is receiving or has received:
(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or

c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

(7) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(8)(a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services or was permanently residing in the United States under color of law at the time such services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): Provided, That any modifications to the provisions of Section
(a)(14) of the federal Unemployment Tax Act as provided by Public Law 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act shall be deemed applicable under the provisions of this section;

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits;

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university or other educational institution, he or she is attending such school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(10) For each week in which he or she is unemployed because of his or her request, or that of his or her duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) In the case of an individual who accepts an early retirement incentive package, unless he or she: (i) Establishes a well-grounded fear of imminent layoff supported by
definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.

(12) For each week with respect to which he or she is receiving or has received benefits under Title II of the Social Security Act or similar payments under any act of Congress, or remuneration in the form of an annuity, pension or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of said benefits, payments or remuneration: Provided, That if such amount of benefits is not a multiple of $1, it shall be computed to the next lowest multiple of $1: Provided, however, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the base period employer or chargeable employer paying such remuneration, or by a fund into which the employer has paid during said base period: Provided further, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to such individual for such week shall not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any act of Congress. Claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension or other retirement pay from a base period employer or chargeable employer or from a trust fund contributed to by a base period employer or chargeable employer.

(13) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the
commissioner finds such individual who within twenty-four
calendar months immediately preceding such decision, has
made a false statement or representation knowing it to be
false or knowingly fails to disclose a material fact, to obtain
or increase any benefit or payment under this article:
Provided, That disqualification under this subdivision shall
not preclude prosecution under section seven, article ten of
this chapter.

§21A-6-10. Benefit rate -- Total unemployment; annual
computation and publication of rates.

(a) Each eligible individual who is totally unemployed in
any week shall be paid benefits with respect to that week at
the weekly rate appearing in Column (C) in the benefit table
in this section, on the line on which in Column (A) there is
indicated the employee’s wage class, except as otherwise
provided under the term “total and partial unemployment” in
section twenty-seven, article one-a of this chapter. The
employee’s wage class shall be determined by his or her base
period wages as shown in Column (B) in the benefit table.
The right of an employee to receive benefits shall not be
prejudiced nor the amount thereof be diminished by reason
of failure by an employer to pay either the wages earned by
the employee or the contribution due on such wages. An
individual who is totally unemployed but earns in excess
of $60 as a result of odd job or subsidiary work, or is paid a
bonus in any benefit week shall be paid benefits for such
week in accordance with the provisions of this chapter
pertaining to benefits for partial unemployment.

(b) (1) The maximum benefit for each wage class shall be
equal to twenty-six times the weekly benefit rate.

(2) The maximum benefit rate shall be sixty-six and two-
thirds percent of the average weekly wage in West Virginia.
(c) On July 1 of each year, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages required for each wage class by $150, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty-five percent of one fifty-second of the median dollar amount of wages in the base period for such wage class and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate: Provided, That the commissioner shall not increase or decrease the maximum weekly benefit rate for the period beginning on the effective date of the amendment and reenactment of this section in the regular session of the legislature in 2009 until the threshold wage is reduced to $9,000, as required by subsection (d), section twenty-eight, article one-a of this chapter. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of $1.

(d) After he or she has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.

(e) Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June 1 following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

(f) The computation and determination of rates as aforesaid shall be completed annually before July 1 and any
such new wage class, with its corresponding wages in base period, weekly benefit rate and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on July 1 shall apply only to a new claim established by a claimant on and after July 1, and does not apply to continued claims of a claimant based on his or her new claim established before said July 1.

### BENEFIT TABLE

<table>
<thead>
<tr>
<th>Class</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $2,200.00</td>
<td>Ineligible</td>
<td></td>
</tr>
<tr>
<td>$2,200.00 - 2,359.99</td>
<td>24.00</td>
<td>624.00</td>
</tr>
<tr>
<td>2,350.00 - 2,499.99</td>
<td>25.00</td>
<td>650.00</td>
</tr>
<tr>
<td>2,500.00 - 2,649.99</td>
<td>27.00</td>
<td>702.00</td>
</tr>
<tr>
<td>2,650.00 - 2,799.99</td>
<td>28.00</td>
<td>728.00</td>
</tr>
<tr>
<td>2,800.00 - 2,949.99</td>
<td>30.00</td>
<td>780.00</td>
</tr>
<tr>
<td>2,950.00 - 3,099.99</td>
<td>31.00</td>
<td>806.00</td>
</tr>
<tr>
<td>3,100.00 - 3,249.99</td>
<td>33.00</td>
<td>858.00</td>
</tr>
<tr>
<td>3,250.00 - 3,399.99</td>
<td>35.00</td>
<td>910.00</td>
</tr>
<tr>
<td>3,400.00 - 3,549.99</td>
<td>36.00</td>
<td>936.00</td>
</tr>
<tr>
<td>3,550.00 - 3,699.99</td>
<td>38.00</td>
<td>988.00</td>
</tr>
<tr>
<td>3,700.00 - 3,849.99</td>
<td>39.00</td>
<td>1,014.00</td>
</tr>
<tr>
<td>3,850.00 - 3,999.99</td>
<td>41.00</td>
<td>1,066.00</td>
</tr>
<tr>
<td>4,000.00 - 4,149.99</td>
<td>43.00</td>
<td>1,118.00</td>
</tr>
<tr>
<td>4,150.00 - 4,299.99</td>
<td>44.00</td>
<td>1,144.00</td>
</tr>
<tr>
<td>4,300.00 - 4,449.99</td>
<td>46.00</td>
<td>1,196.00</td>
</tr>
<tr>
<td>4,450.00 - 4,599.99</td>
<td>47.00</td>
<td>1,222.00</td>
</tr>
<tr>
<td>4,600.00 - 4,749.99</td>
<td>49.00</td>
<td>1,274.00</td>
</tr>
<tr>
<td>4,750.00 - 4,899.99</td>
<td>51.00</td>
<td>1,326.00</td>
</tr>
<tr>
<td>4,900.00 - 5,049.99</td>
<td>52.00</td>
<td>1,352.00</td>
</tr>
<tr>
<td>5,050.00 - 5,199.99</td>
<td>54.00</td>
<td>1,404.00</td>
</tr>
</tbody>
</table>
1726  | **UNEMPLOYMENT COMPENSATION**  | [Ch. 218]
---|---|---
89  | 21 | 5,200.00 - 5,349.99 | 55.00 | 1,430.00
90  | 22 | 5,350.00 - 5,499.99 | 57.00 | 1,482.00
91  | 23 | 5,500.00 - 5,649.99 | 58.00 | 1,508.00
92  | 24 | 5,650.00 - 5,799.99 | 60.00 | 1,560.00
93  | 25 | 5,800.00 - 5,949.99 | 62.00 | 1,612.00
94  | 26 | 5,950.00 - 6,099.99 | 63.00 | 1,638.00
95  | 27 | 6,100.00 - 6,249.99 | 65.00 | 1,690.00
96  | 28 | 6,250.00 - 6,399.99 | 66.00 | 1,716.00
97  | 29 | 6,400.00 - 6,549.99 | 68.00 | 1,768.00
98  | 30 | 6,550.00 - 6,699.99 | 70.00 | 1,820.00
99  | 31 | 6,700.00 - 6,849.99 | 71.00 | 1,846.00
100 | 32 | 6,850.00 - 6,999.99 | 73.00 | 1,898.00
101 | 33 | 7,000.00 - 7,149.99 | 74.00 | 1,924.00
102 | 34 | 7,150.00 - 7,299.99 | 76.00 | 1,976.00
103 | 35 | 7,300.00 - 7,449.99 | 78.00 | 2,028.00
104 | 36 | 7,450.00 - 7,599.99 | 79.00 | 2,054.00
105 | 37 | 7,600.00 - 7,749.99 | 81.00 | 2,106.00
106 | 38 | 7,750.00 - 7,899.99 | 82.00 | 2,132.00
107 | 39 | 7,900.00 - 8,049.99 | 84.00 | 2,184.00
108 | 40 | 8,050.00 - 8,199.99 | 85.00 | 2,210.00
109 | 41 | 8,200.00 - 8,349.99 | 87.00 | 2,262.00
110 | 42 | 8,350.00 - 8,499.99 | 89.00 | 2,314.00
111 | 43 | 8,500.00 - 8,649.99 | 90.00 | 2,340.00
112 | 44 | 8,650.00 - 8,799.99 | 92.00 | 2,392.00
113 | 45 | 8,800.00 - 8,949.99 | 93.00 | 2,418.00
114 | 46 | 8,950.00 - 9,099.99 | 95.00 | 2,470.00
115 | 47 | 9,100.00 - 9,249.99 | 97.00 | 2,522.00
116 | 48 | 9,250.00 - 9,399.99 | 98.00 | 2,548.00
117 | 49 | 9,400.00 - 9,549.99 | 100.00 | 2,600.00
118 | 50 | 9,550.00 - 9,699.99 | 101.00 | 2,626.00
119 | 51 | 9,700.00 - 9,849.99 | 103.00 | 2,678.00
120 | 52 | 9,850.00 - 9,999.99 | 104.00 | 2,704.00
121 | 53 | 10,000.00 - 10,149.99 | 106.00 | 2,756.00
<table>
<thead>
<tr>
<th>No.</th>
<th>Weekly Rate</th>
<th>Compensation Base Range</th>
<th>Weekly Benefit Amount</th>
<th>Weekly Compensation Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>122</td>
<td>10,150.00</td>
<td>10,299.99</td>
<td>108.00</td>
<td>2,808.00</td>
</tr>
<tr>
<td>123</td>
<td>10,300.00</td>
<td>10,449.99</td>
<td>109.00</td>
<td>2,834.00</td>
</tr>
<tr>
<td>124</td>
<td>10,450.00</td>
<td>10,599.99</td>
<td>111.00</td>
<td>2,886.00</td>
</tr>
<tr>
<td>125</td>
<td>10,600.00</td>
<td>10,749.99</td>
<td>112.00</td>
<td>2,912.00</td>
</tr>
<tr>
<td>126</td>
<td>10,750.00</td>
<td>10,899.99</td>
<td>114.00</td>
<td>2,964.00</td>
</tr>
<tr>
<td>127</td>
<td>10,900.00</td>
<td>11,049.99</td>
<td>116.00</td>
<td>3,016.00</td>
</tr>
<tr>
<td>128</td>
<td>11,050.00</td>
<td>11,199.99</td>
<td>117.00</td>
<td>3,042.00</td>
</tr>
<tr>
<td>129</td>
<td>11,200.00</td>
<td>11,349.99</td>
<td>119.00</td>
<td>3,094.00</td>
</tr>
<tr>
<td>130</td>
<td>11,350.00</td>
<td>11,499.99</td>
<td>120.00</td>
<td>3,120.00</td>
</tr>
<tr>
<td>131</td>
<td>11,500.00</td>
<td>11,649.99</td>
<td>122.00</td>
<td>3,172.00</td>
</tr>
<tr>
<td>132</td>
<td>11,650.00</td>
<td>11,799.99</td>
<td>124.00</td>
<td>3,224.00</td>
</tr>
<tr>
<td>133</td>
<td>11,800.00</td>
<td>11,949.99</td>
<td>125.00</td>
<td>3,250.00</td>
</tr>
<tr>
<td>134</td>
<td>11,950.00</td>
<td>12,099.99</td>
<td>127.00</td>
<td>3,302.00</td>
</tr>
<tr>
<td>135</td>
<td>12,100.00</td>
<td>12,249.99</td>
<td>128.00</td>
<td>3,328.00</td>
</tr>
<tr>
<td>136</td>
<td>12,250.00</td>
<td>12,399.99</td>
<td>130.00</td>
<td>3,380.00</td>
</tr>
<tr>
<td>137</td>
<td>12,400.00</td>
<td>12,549.99</td>
<td>131.00</td>
<td>3,406.00</td>
</tr>
<tr>
<td>138</td>
<td>12,550.00</td>
<td>12,699.99</td>
<td>133.00</td>
<td>3,458.00</td>
</tr>
<tr>
<td>139</td>
<td>12,700.00</td>
<td>12,849.99</td>
<td>135.00</td>
<td>3,510.00</td>
</tr>
<tr>
<td>140</td>
<td>12,850.00</td>
<td>12,999.99</td>
<td>136.00</td>
<td>3,536.00</td>
</tr>
<tr>
<td>141</td>
<td>13,000.00</td>
<td>13,149.99</td>
<td>138.00</td>
<td>3,588.00</td>
</tr>
<tr>
<td>142</td>
<td>13,150.00</td>
<td>13,299.99</td>
<td>139.00</td>
<td>3,614.00</td>
</tr>
<tr>
<td>143</td>
<td>13,300.00</td>
<td>13,449.99</td>
<td>141.00</td>
<td>3,666.00</td>
</tr>
<tr>
<td>144</td>
<td>13,450.00</td>
<td>13,599.99</td>
<td>143.00</td>
<td>3,718.00</td>
</tr>
<tr>
<td>145</td>
<td>13,600.00</td>
<td>13,749.99</td>
<td>144.00</td>
<td>3,744.00</td>
</tr>
<tr>
<td>146</td>
<td>13,750.00</td>
<td>13,899.99</td>
<td>146.00</td>
<td>3,796.00</td>
</tr>
<tr>
<td>147</td>
<td>13,900.00</td>
<td>14,049.99</td>
<td>147.00</td>
<td>3,822.00</td>
</tr>
<tr>
<td>148</td>
<td>14,050.00</td>
<td>14,199.99</td>
<td>149.00</td>
<td>3,874.00</td>
</tr>
<tr>
<td>149</td>
<td>14,200.00</td>
<td>14,349.99</td>
<td>150.00</td>
<td>3,900.00</td>
</tr>
<tr>
<td>150</td>
<td>14,350.00</td>
<td>14,499.99</td>
<td>152.00</td>
<td>3,952.00</td>
</tr>
<tr>
<td>151</td>
<td>14,500.00</td>
<td>14,649.99</td>
<td>154.00</td>
<td>4,004.00</td>
</tr>
<tr>
<td>152</td>
<td>14,650.00</td>
<td>14,799.99</td>
<td>155.00</td>
<td>4,030.00</td>
</tr>
<tr>
<td>153</td>
<td>14,800.00</td>
<td>14,949.99</td>
<td>157.00</td>
<td>4,082.00</td>
</tr>
<tr>
<td>154</td>
<td>14,950.00</td>
<td>15,099.99</td>
<td>158.00</td>
<td>4,108.00</td>
</tr>
<tr>
<td></td>
<td>UNEMPLOYMENT COMPENSATION</td>
<td>[Ch. 218]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------</td>
<td>-----------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>155</td>
<td>87  15,100.00 - 15,249.99 160.00 4,160.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>156</td>
<td>88  15,250.00 - 15,399.99 162.00 4,212.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>157</td>
<td>89  15,400.00 - 15,549.99 163.00 4,238.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>158</td>
<td>90  15,550.00 - 15,699.99 165.00 4,290.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>159</td>
<td>91  15,700.00 - 15,849.99 166.00 4,316.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>160</td>
<td>92  15,850.00 - 15,999.99 168.00 4,368.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>161</td>
<td>93  16,000.00 - 16,149.99 170.00 4,420.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>162</td>
<td>94  16,150.00 - 16,299.99 171.00 4,446.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>163</td>
<td>95  16,300.00 - 16,449.99 173.00 4,498.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>164</td>
<td>96  16,450.00 - 16,599.99 174.00 4,524.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>165</td>
<td>97  16,600.00 - 16,749.99 176.00 4,576.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>166</td>
<td>98  16,750.00 - 16,899.99 177.00 4,602.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>167</td>
<td>99  16,900.00 - 17,049.99 179.00 4,654.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>168</td>
<td>100 17,050.00 - 17,199.99 181.00 4,706.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>169</td>
<td>101 17,200.00 - 17,349.99 182.00 4,732.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>170</td>
<td>102 17,350.00 - 17,499.99 184.00 4,784.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>171</td>
<td>103 17,500.00 - 17,649.99 185.00 4,810.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>172</td>
<td>104 17,650.00 - 17,799.99 187.00 4,862.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>173</td>
<td>105 17,800.00 - 17,949.99 189.00 4,914.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>174</td>
<td>106 17,950.00 - 18,099.99 190.00 4,940.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>175</td>
<td>107 18,100.00 - 18,249.99 192.00 4,992.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>176</td>
<td>108 18,250.00 - 18,399.99 193.00 5,018.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>177</td>
<td>109 18,400.00 - 18,549.99 195.00 5,070.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>178</td>
<td>110 18,550.00 - 18,699.99 196.00 5,096.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>179</td>
<td>111 18,700.00 - 18,849.99 198.00 5,148.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>180</td>
<td>112 18,850.00 - 18,999.99 200.00 5,200.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181</td>
<td>113 19,000.00 - 19,149.99 201.00 5,226.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>182</td>
<td>114 19,150.00 - 19,299.99 203.00 5,278.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>183</td>
<td>115 19,300.00 - 19,449.99 204.00 5,304.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>184</td>
<td>116 19,450.00 - 19,599.99 206.00 5,356.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>185</td>
<td>117 19,600.00 - 19,749.99 208.00 5,408.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>186</td>
<td>118 19,750.00 - 19,899.99 209.00 5,434.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>187</td>
<td>119 19,900.00 - 20,049.99 211.00 5,486.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>188</td>
<td>120</td>
<td>20,050.00 - 20,199.99</td>
<td>212.00</td>
<td>5,512.00</td>
</tr>
<tr>
<td>189</td>
<td>121</td>
<td>20,200.00 - 20,349.99</td>
<td>214.00</td>
<td>5,564.00</td>
</tr>
<tr>
<td>190</td>
<td>122</td>
<td>20,350.00 - 20,499.99</td>
<td>216.00</td>
<td>5,616.00</td>
</tr>
<tr>
<td>191</td>
<td>123</td>
<td>20,500.00 - 20,649.99</td>
<td>217.00</td>
<td>5,642.00</td>
</tr>
<tr>
<td>192</td>
<td>124</td>
<td>20,650.00 - 20,799.99</td>
<td>219.00</td>
<td>5,694.00</td>
</tr>
<tr>
<td>193</td>
<td>125</td>
<td>20,800.00 - 20,949.99</td>
<td>220.00</td>
<td>5,720.00</td>
</tr>
<tr>
<td>194</td>
<td>126</td>
<td>20,950.00 - 21,099.99</td>
<td>222.00</td>
<td>5,772.00</td>
</tr>
<tr>
<td>195</td>
<td>127</td>
<td>21,100.00 - 21,249.99</td>
<td>223.00</td>
<td>5,798.00</td>
</tr>
<tr>
<td>196</td>
<td>128</td>
<td>21,250.00 - 21,399.99</td>
<td>225.00</td>
<td>5,850.00</td>
</tr>
<tr>
<td>197</td>
<td>129</td>
<td>21,400.00 - 21,549.99</td>
<td>227.00</td>
<td>5,902.00</td>
</tr>
<tr>
<td>198</td>
<td>130</td>
<td>21,550.00 - 21,699.99</td>
<td>228.00</td>
<td>5,928.00</td>
</tr>
<tr>
<td>199</td>
<td>131</td>
<td>21,700.00 - 21,849.99</td>
<td>230.00</td>
<td>5,980.00</td>
</tr>
<tr>
<td>200</td>
<td>132</td>
<td>21,850.00 - 21,999.99</td>
<td>231.00</td>
<td>6,006.00</td>
</tr>
<tr>
<td>201</td>
<td>133</td>
<td>22,000.00 - 22,149.99</td>
<td>233.00</td>
<td>6,058.00</td>
</tr>
<tr>
<td>202</td>
<td>134</td>
<td>22,150.00 - 22,299.99</td>
<td>235.00</td>
<td>6,110.00</td>
</tr>
<tr>
<td>203</td>
<td>135</td>
<td>22,300.00 - 22,449.99</td>
<td>236.00</td>
<td>6,136.00</td>
</tr>
<tr>
<td>204</td>
<td>136</td>
<td>22,450.00 - 22,599.99</td>
<td>238.00</td>
<td>6,188.00</td>
</tr>
<tr>
<td>205</td>
<td>137</td>
<td>22,600.00 - 22,749.99</td>
<td>239.00</td>
<td>6,214.00</td>
</tr>
<tr>
<td>206</td>
<td>138</td>
<td>22,750.00 - 22,899.99</td>
<td>241.00</td>
<td>6,266.00</td>
</tr>
<tr>
<td>207</td>
<td>139</td>
<td>22,900.00 - 23,049.99</td>
<td>243.00</td>
<td>6,318.00</td>
</tr>
<tr>
<td>208</td>
<td>140</td>
<td>23,050.00 - 23,199.99</td>
<td>244.00</td>
<td>6,344.00</td>
</tr>
<tr>
<td>209</td>
<td>141</td>
<td>23,200.00 - 23,349.99</td>
<td>246.00</td>
<td>6,396.00</td>
</tr>
<tr>
<td>210</td>
<td>142</td>
<td>23,350.00 - 23,499.99</td>
<td>247.00</td>
<td>6,422.00</td>
</tr>
<tr>
<td>211</td>
<td>143</td>
<td>23,500.00 - 23,649.99</td>
<td>249.00</td>
<td>6,474.00</td>
</tr>
<tr>
<td>212</td>
<td>144</td>
<td>23,650.00 - 23,799.99</td>
<td>250.00</td>
<td>6,500.00</td>
</tr>
<tr>
<td>213</td>
<td>145</td>
<td>23,800.00 - 23,949.99</td>
<td>252.00</td>
<td>6,552.00</td>
</tr>
<tr>
<td>214</td>
<td>146</td>
<td>23,950.00 - 24,099.99</td>
<td>254.00</td>
<td>6,604.00</td>
</tr>
<tr>
<td>215</td>
<td>147</td>
<td>24,100.00 - 24,249.99</td>
<td>255.00</td>
<td>6,630.00</td>
</tr>
<tr>
<td>216</td>
<td>148</td>
<td>24,250.00 - 24,399.99</td>
<td>257.00</td>
<td>6,682.00</td>
</tr>
<tr>
<td>217</td>
<td>149</td>
<td>24,400.00 - 24,549.99</td>
<td>258.00</td>
<td>6,708.00</td>
</tr>
<tr>
<td>218</td>
<td>150</td>
<td>24,550.00 - 24,699.99</td>
<td>260.00</td>
<td>6,760.00</td>
</tr>
<tr>
<td>219</td>
<td>151</td>
<td>24,700.00 - 24,849.99</td>
<td>262.00</td>
<td>6,812.00</td>
</tr>
<tr>
<td>220</td>
<td>152</td>
<td>24,850.00 - 24,999.99</td>
<td>263.00</td>
<td>6,838.00</td>
</tr>
<tr>
<td>Week Ending</td>
<td>Unemployment Compensation</td>
<td>[Ch. 218]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>---------------------------</td>
<td>----------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>221</td>
<td>25,000.00 - 25,149.99</td>
<td>265.00</td>
<td>6,890.00</td>
<td></td>
</tr>
<tr>
<td>222</td>
<td>25,150.00 - 25,299.99</td>
<td>266.00</td>
<td>6,916.00</td>
<td></td>
</tr>
<tr>
<td>223</td>
<td>25,300.00 - 25,449.99</td>
<td>268.00</td>
<td>6,968.00</td>
<td></td>
</tr>
<tr>
<td>224</td>
<td>25,450.00 - 25,599.99</td>
<td>269.00</td>
<td>6,994.00</td>
<td></td>
</tr>
<tr>
<td>225</td>
<td>25,600.00 - 25,749.99</td>
<td>271.00</td>
<td>7,046.00</td>
<td></td>
</tr>
<tr>
<td>226</td>
<td>25,750.00 - 25,899.99</td>
<td>273.00</td>
<td>7,098.00</td>
<td></td>
</tr>
<tr>
<td>227</td>
<td>25,900.00 - 26,049.99</td>
<td>274.00</td>
<td>7,124.00</td>
<td></td>
</tr>
<tr>
<td>228</td>
<td>26,050.00 - 26,199.99</td>
<td>276.00</td>
<td>7,176.00</td>
<td></td>
</tr>
<tr>
<td>229</td>
<td>26,200.00 - 26,349.99</td>
<td>277.00</td>
<td>7,202.00</td>
<td></td>
</tr>
<tr>
<td>230</td>
<td>26,350.00 - 26,499.99</td>
<td>279.00</td>
<td>7,254.00</td>
<td></td>
</tr>
<tr>
<td>231</td>
<td>26,500.00 - 26,649.99</td>
<td>281.00</td>
<td>7,306.00</td>
<td></td>
</tr>
<tr>
<td>232</td>
<td>26,650.00 - 26,799.99</td>
<td>282.00</td>
<td>7,332.00</td>
<td></td>
</tr>
<tr>
<td>233</td>
<td>26,800.00 - 26,949.99</td>
<td>284.00</td>
<td>7,384.00</td>
<td></td>
</tr>
<tr>
<td>234</td>
<td>26,950.00 - 27,099.99</td>
<td>285.00</td>
<td>7,410.00</td>
<td></td>
</tr>
<tr>
<td>235</td>
<td>27,100.00 - 27,249.99</td>
<td>287.00</td>
<td>7,462.00</td>
<td></td>
</tr>
<tr>
<td>236</td>
<td>27,250.00 - 27,399.99</td>
<td>289.00</td>
<td>7,514.00</td>
<td></td>
</tr>
<tr>
<td>237</td>
<td>27,400.00 - 27,549.99</td>
<td>290.00</td>
<td>7,540.00</td>
<td></td>
</tr>
<tr>
<td>238</td>
<td>27,550.00 - 27,699.99</td>
<td>292.00</td>
<td>7,592.00</td>
<td></td>
</tr>
<tr>
<td>239</td>
<td>27,700.00 - 27,849.99</td>
<td>293.00</td>
<td>7,618.00</td>
<td></td>
</tr>
<tr>
<td>240</td>
<td>27,850.00 - 27,999.99</td>
<td>295.00</td>
<td>7,670.00</td>
<td></td>
</tr>
<tr>
<td>241</td>
<td>28,000.00 - 28,149.99</td>
<td>296.00</td>
<td>7,696.00</td>
<td></td>
</tr>
<tr>
<td>242</td>
<td>28,150.00 - 28,299.99</td>
<td>298.00</td>
<td>7,748.00</td>
<td></td>
</tr>
<tr>
<td>243</td>
<td>28,300.00 - 28,449.99</td>
<td>300.00</td>
<td>7,800.00</td>
<td></td>
</tr>
<tr>
<td>244</td>
<td>28,450.00 - 28,599.99</td>
<td>301.00</td>
<td>7,826.00</td>
<td></td>
</tr>
<tr>
<td>245</td>
<td>28,600.00 - 28,749.99</td>
<td>303.00</td>
<td>7,878.00</td>
<td></td>
</tr>
<tr>
<td>246</td>
<td>28,750.00 - 28,899.99</td>
<td>304.00</td>
<td>7,904.00</td>
<td></td>
</tr>
<tr>
<td>247</td>
<td>28,900.00 - 29,049.99</td>
<td>306.00</td>
<td>7,956.00</td>
<td></td>
</tr>
<tr>
<td>248</td>
<td>29,050.00 - 29,199.99</td>
<td>308.00</td>
<td>8,008.00</td>
<td></td>
</tr>
<tr>
<td>249</td>
<td>29,200.00 - 29,349.99</td>
<td>309.00</td>
<td>8,034.00</td>
<td></td>
</tr>
<tr>
<td>250</td>
<td>29,350.00 - 29,499.99</td>
<td>311.00</td>
<td>8,086.00</td>
<td></td>
</tr>
<tr>
<td>251</td>
<td>29,500.00 - 29,649.99</td>
<td>312.00</td>
<td>8,112.00</td>
<td></td>
</tr>
<tr>
<td>252</td>
<td>29,650.00 - 29,799.99</td>
<td>314.00</td>
<td>8,164.00</td>
<td></td>
</tr>
<tr>
<td>253</td>
<td>29,800.00 - 29,949.99</td>
<td>315.00</td>
<td>8,190.00</td>
<td></td>
</tr>
<tr>
<td>Ch.</td>
<td>#</td>
<td>Lower Bound</td>
<td>Upper Bound</td>
<td>Weekly Compensation</td>
</tr>
<tr>
<td>-----</td>
<td>---</td>
<td>-------------</td>
<td>-------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>254</td>
<td>186</td>
<td>29,950.00</td>
<td>30,099.99</td>
<td>317.00</td>
</tr>
<tr>
<td>255</td>
<td>187</td>
<td>30,100.00</td>
<td>30,249.99</td>
<td>319.00</td>
</tr>
<tr>
<td>256</td>
<td>188</td>
<td>30,250.00</td>
<td>30,399.99</td>
<td>320.00</td>
</tr>
<tr>
<td>257</td>
<td>189</td>
<td>30,400.00</td>
<td>30,549.99</td>
<td>322.00</td>
</tr>
<tr>
<td>258</td>
<td>190</td>
<td>30,550.00</td>
<td>30,699.99</td>
<td>323.00</td>
</tr>
<tr>
<td>259</td>
<td>191</td>
<td>30,700.00</td>
<td>30,849.99</td>
<td>325.00</td>
</tr>
<tr>
<td>260</td>
<td>192</td>
<td>30,850.00</td>
<td>30,999.99</td>
<td>327.00</td>
</tr>
<tr>
<td>261</td>
<td>193</td>
<td>31,000.00</td>
<td>31,149.99</td>
<td>328.00</td>
</tr>
<tr>
<td>262</td>
<td>194</td>
<td>31,150.00</td>
<td>31,299.99</td>
<td>330.00</td>
</tr>
<tr>
<td>263</td>
<td>195</td>
<td>31,300.00</td>
<td>31,449.99</td>
<td>331.00</td>
</tr>
<tr>
<td>264</td>
<td>196</td>
<td>31,450.00</td>
<td>31,599.99</td>
<td>333.00</td>
</tr>
<tr>
<td>265</td>
<td>197</td>
<td>31,600.00</td>
<td>31,749.99</td>
<td>335.00</td>
</tr>
<tr>
<td>266</td>
<td>198</td>
<td>31,750.00</td>
<td>31,899.99</td>
<td>336.00</td>
</tr>
<tr>
<td>267</td>
<td>199</td>
<td>31,900.00</td>
<td>32,049.99</td>
<td>338.00</td>
</tr>
<tr>
<td>268</td>
<td>200</td>
<td>32,050.00</td>
<td>32,199.99</td>
<td>339.00</td>
</tr>
<tr>
<td>269</td>
<td>201</td>
<td>32,200.00</td>
<td>32,349.99</td>
<td>341.00</td>
</tr>
<tr>
<td>270</td>
<td>202</td>
<td>32,350.00</td>
<td>32,499.99</td>
<td>342.00</td>
</tr>
<tr>
<td>271</td>
<td>203</td>
<td>32,500.00</td>
<td>32,649.99</td>
<td>344.00</td>
</tr>
<tr>
<td>272</td>
<td>204</td>
<td>32,650.00</td>
<td>32,799.99</td>
<td>346.00</td>
</tr>
<tr>
<td>273</td>
<td>205</td>
<td>32,800.00</td>
<td>32,949.99</td>
<td>347.00</td>
</tr>
<tr>
<td>274</td>
<td>206</td>
<td>32,950.00</td>
<td>33,099.99</td>
<td>349.00</td>
</tr>
<tr>
<td>275</td>
<td>207</td>
<td>33,100.00</td>
<td>33,249.99</td>
<td>350.00</td>
</tr>
<tr>
<td>276</td>
<td>208</td>
<td>33,250.00</td>
<td>33,399.99</td>
<td>352.00</td>
</tr>
<tr>
<td>277</td>
<td>209</td>
<td>33,400.00</td>
<td>33,549.99</td>
<td>354.00</td>
</tr>
<tr>
<td>278</td>
<td>210</td>
<td>33,550.00</td>
<td>-33,699.99</td>
<td>355.00</td>
</tr>
<tr>
<td>279</td>
<td>211</td>
<td>33,700.00</td>
<td>-33,849.99</td>
<td>357.00</td>
</tr>
<tr>
<td>280</td>
<td>212</td>
<td>33,850.00</td>
<td>-33,999.99</td>
<td>358.00</td>
</tr>
<tr>
<td>281</td>
<td>213</td>
<td>34,000.00</td>
<td>-34,149.99</td>
<td>360.00</td>
</tr>
<tr>
<td>282</td>
<td>214</td>
<td>34,150.00</td>
<td>-34,299.99</td>
<td>361.00</td>
</tr>
<tr>
<td>283</td>
<td>215</td>
<td>34,300.00</td>
<td>-34,449.99</td>
<td>363.00</td>
</tr>
<tr>
<td>284</td>
<td>216</td>
<td>34,450.00</td>
<td>-34,599.99</td>
<td>365.00</td>
</tr>
<tr>
<td>285</td>
<td>217</td>
<td>34,600.00</td>
<td>-34,749.99</td>
<td>366.00</td>
</tr>
<tr>
<td>286</td>
<td>218</td>
<td>34,750.00</td>
<td>-34,899.99</td>
<td>368.00</td>
</tr>
<tr>
<td>1732</td>
<td>UNEMPLOYMENT COMPENSATION</td>
<td>[Ch. 218</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>--------------------------</td>
<td>---------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>287</td>
<td>219 34,900.00</td>
<td>369.00</td>
<td>9,594.00</td>
<td></td>
</tr>
<tr>
<td>288</td>
<td>220 35,050.00</td>
<td>371.00</td>
<td>9,646.00</td>
<td></td>
</tr>
<tr>
<td>289</td>
<td>221 35,200.00</td>
<td>373.00</td>
<td>9,698.00</td>
<td></td>
</tr>
<tr>
<td>290</td>
<td>222 35,350.00</td>
<td>374.00</td>
<td>9,724.00</td>
<td></td>
</tr>
<tr>
<td>291</td>
<td>223 35,500.00</td>
<td>376.00</td>
<td>9,776.00</td>
<td></td>
</tr>
<tr>
<td>292</td>
<td>224 35,650.00</td>
<td>377.00</td>
<td>9,802.00</td>
<td></td>
</tr>
<tr>
<td>293</td>
<td>225 35,800.00</td>
<td>379.00</td>
<td>9,854.00</td>
<td></td>
</tr>
<tr>
<td>294</td>
<td>226 35,950.00</td>
<td>381.00</td>
<td>9,906.00</td>
<td></td>
</tr>
<tr>
<td>295</td>
<td>227 36,100.00</td>
<td>382.00</td>
<td>9,932.00</td>
<td></td>
</tr>
<tr>
<td>296</td>
<td>228 36,250.00</td>
<td>384.00</td>
<td>9,984.00</td>
<td></td>
</tr>
<tr>
<td>297</td>
<td>229 36,400.00</td>
<td>385.00</td>
<td>10,010.00</td>
<td></td>
</tr>
<tr>
<td>298</td>
<td>230 36,550.00</td>
<td>387.00</td>
<td>10,062.00</td>
<td></td>
</tr>
<tr>
<td>299</td>
<td>231 36,700.00</td>
<td>388.00</td>
<td>10,088.00</td>
<td></td>
</tr>
<tr>
<td>300</td>
<td>232 36,850.00</td>
<td>390.00</td>
<td>10,140.00</td>
<td></td>
</tr>
<tr>
<td>301</td>
<td>233 37,000.00</td>
<td>392.00</td>
<td>10,192.00</td>
<td></td>
</tr>
<tr>
<td>302</td>
<td>234 37,150.00</td>
<td>393.00</td>
<td>10,218.00</td>
<td></td>
</tr>
<tr>
<td>303</td>
<td>235 37,300.00</td>
<td>395.00</td>
<td>10,270.00</td>
<td></td>
</tr>
<tr>
<td>304</td>
<td>236 37,450.00</td>
<td>396.00</td>
<td>10,296.00</td>
<td></td>
</tr>
<tr>
<td>305</td>
<td>237 37,600.00</td>
<td>398.00</td>
<td>10,348.00</td>
<td></td>
</tr>
<tr>
<td>306</td>
<td>238 37,750.00</td>
<td>400.00</td>
<td>10,400.00</td>
<td></td>
</tr>
<tr>
<td>307</td>
<td>239 37,900.00</td>
<td>401.00</td>
<td>10,426.00</td>
<td></td>
</tr>
<tr>
<td>308</td>
<td>240 38,050.00</td>
<td>403.00</td>
<td>10,478.00</td>
<td></td>
</tr>
<tr>
<td>309</td>
<td>241 38,200.00</td>
<td>404.00</td>
<td>10,504.00</td>
<td></td>
</tr>
<tr>
<td>310</td>
<td>242 38,350.00</td>
<td>406.00</td>
<td>10,556.00</td>
<td></td>
</tr>
<tr>
<td>311</td>
<td>243 38,500.00</td>
<td>408.00</td>
<td>10,608.00</td>
<td></td>
</tr>
<tr>
<td>312</td>
<td>244 38,650.00</td>
<td>409.00</td>
<td>10,634.00</td>
<td></td>
</tr>
<tr>
<td>313</td>
<td>245 38,800.00</td>
<td>411.00</td>
<td>10,686.00</td>
<td></td>
</tr>
<tr>
<td>314</td>
<td>246 38,950.00</td>
<td>412.00</td>
<td>10,712.00</td>
<td></td>
</tr>
<tr>
<td>315</td>
<td>247 39,100.00</td>
<td>414.00</td>
<td>10,764.00</td>
<td></td>
</tr>
<tr>
<td>316</td>
<td>248 39,250.00</td>
<td>415.00</td>
<td>10,790.00</td>
<td></td>
</tr>
<tr>
<td>317</td>
<td>249 39,400.00</td>
<td>417.00</td>
<td>10,842.00</td>
<td></td>
</tr>
<tr>
<td>318</td>
<td>250 39,550.00</td>
<td>419.00</td>
<td>10,894.00</td>
<td></td>
</tr>
<tr>
<td>319</td>
<td>251 39,700.00</td>
<td>420.00</td>
<td>10,920.00</td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER 23. WORKERS’ COMPENSATION.

ARTICLE 2C. EMPLOYERS’ MUTUAL INSURANCE COMPANY.


(a) (1) On or before July 1, 2005, 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.
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 code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:

(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;

(B) With respect to fiscal years beginning on and after July 1, 2008, 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 June 30, 2013 and every five years thereafter, the commissioner shall review the percentage surcharge and determine a new percentage as he or she deems necessary.

(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 March 1 of the succeeding year.

(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 except as set forth in subdivision (4) of this subsection;

(3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as annually determined, by May 1 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 July 1, 2008, shall be nine percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied.

(B) By May 1 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.

(4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump sum transfer of $40 million generated from the surcharges assessed pursuant to paragraph (B), subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of
Employment Programs’ Commissioner for deposit with the Secretary of the Treasury of the United States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to section four, article eight, chapter twenty-one-a of this code.

(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.

CHAPTER 219

(Com. Sub. for H.B. 2685 - By Delegates Blair, Guthrie and Walters)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §44B-4-409 of the Code of West Virginia, 1931, as amended; to amend and reenact §44B-5-505 of said code; and to amend said code by adding thereto a new section, designated §44B-6-606, all relating to amending the Uniform Principal and Income Act; complying with IRS comments regarding allocation of IRA distributions; clarifying the formula for calculating how much a trust needs to distribute
and how much it can use to pay taxes; and providing effective
dates of amendments.

Be it enacted by the Legislature of West Virginia:

That §44B-4-409 of the Code of West Virginia, 1931, as
amended, be amended and reenacted; that §44B-5-505 of said code
be amended and reenacted; and that said code be amended by adding
thereto a new section, designated §44B-6-606, all to read as follows:

Article
4. Allocation of Receipts During Administration of Trust.
5. Allocation of Disbursements During Administration of Trust.

ARTICLE 4. ALLOCATION OF RECEIPTS DURING
ADMINISTRATION OF TRUST.

PART 3--RECEIPTS NORMALLY APPORTIONED

§44B-4-409. Deferred compensation, annuities and similar
payments.

(a) In this section:

(1) “Payment” means a payment that a trustee may
receive over a fixed number of years or during the life of one
or more individuals because of services rendered or property
transferred to the payer in exchange for future payments. The
term includes a payment made in money or property from the
payer’s general assets or from a separate fund created by the
payer. For purposes of subsections (d), (e), (f), and (g), the
term also includes any payment from any separate fund,
regardless of the reason for the payment.

(2) “Separate fund” includes a private or commercial
annuity, an individual retirement account, and a pension,
profit-sharing, stock-bonus, or stock-ownership plan.
14 (b) To the extent that a payment is characterized as
15 interest, a dividend, or a payment made in lieu of interest or
16 a dividend, a trustee shall allocate the payment to income.
17 The trustee shall allocate to principal the balance of the
18 payment and any other payment received in the same
19 accounting period that is not characterized as interest, a
20 dividend, or an equivalent payment.

21 (c) If no part of a payment is characterized as interest, a
22 dividend, or an equivalent payment, and all or part of the
23 payment is required to be made, a trustee shall allocate to
24 income ten percent of the part that is required to be made
25 during the accounting period and the balance to principal. If
26 no part of a payment is required to be made or the payment
27 received is the entire amount to which the trustee is entitled,
28 the trustee shall allocate the entire payment to principal. For
29 purposes of this subsection, a payment is not required to be
30 made to the extent that it is made because the trustee
31 exercises a right of withdrawal.

32 (d) Except as otherwise provided in subsection (e),
33 subsections (f) and (g) apply, and subsections (b) and (c) do
34 not apply, in determining the allocation of a payment made
35 from a separate fund to:

36 (1) A trust to which an election to qualify for a marital
37 deduction under 26 U.S.C. § 2056(b)(7), as amended, has
38 been made; or

39 (2) A trust that qualifies for the marital deduction under

41 (e) Subsections (d), (f), and (g) do not apply if and to the
42 extent that the series of payments would, without the
43 application of subsection (d), qualify for the marital

45 (f) A trustee shall determine the internal income of each
46 separate fund for the accounting period as if the separate fund
were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund’s value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund’s value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. § 7520, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which section four hundred ten of this article applies.

ARTICLE 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

§44B-5-505. Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.
(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust’s share of an entity’s taxable income must be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust’s taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§44B-6-606. Transitional Matters.

Section four hundred nine, article four of this chapter, as amended during the regular session of the 2009 Legislature, applies to a trust described in subsection (d) of section four hundred nine, article four of this chapter on and after the following dates:

(1) If the trust is not funded as of the effective date of the amendments to this chapter enacted during the regular
session of the two thousand nine legislature, the date of the
decedent’s death.

(2) If the trust is initially funded in the calendar year
beginning the first day of January, two thousand nine, the
date of the decedent’s death.

(3) If the trust is not described in paragraph (1) or (2), the
first day of January, two thousand nine.

CHAPTER 220

(S.B. 515 - By Senators Jenkins, Foster, Minard, Stollings, Wells, Caruth, Sypolt and Kessler)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new chapter, designated §44C-1-1,
§44C-1-2, §44C-1-3, §44C-1-4, §44C-1-5, §44C-1-6,
§44C-2-1, §44C-2-2, §44C-2-3, §44C-2-4, §44C-2-5,
§44C-2-6, §44C-2-7, §44C-2-8, §44C-3-1, §44C-3-2,
§44C-4-1, §44C-4-2, §44C-4-3, §44C-5-1, §44C-5-2 and
§44C-5-3, all relating to enactment of the Uniform Adult
Guardianship and Protective Proceedings Jurisdiction Act;
defining terms; authorizing a court in this state to treat a foreign
country as if it were a state; allowing communication and
cooperaion between courts for pending guardianship protective
proceedings; providing for taking testimony of a witness in
another state; establishing jurisdictional basis for guardianship
and protective proceedings; providing guidance for
determination of jurisdiction between states; providing for special jurisdiction in certain situations; providing for exclusive and continuing jurisdiction for a court that appointed a guardian or issued a protective order; providing criteria for determining the appropriate forum for guardianship and protective proceedings; authorizing a court to decline jurisdiction because of unjustifiable conduct; providing for additional notice of proceedings between states; determining jurisdiction when there are proceedings in more than one state; providing for transfer of guardianship or conservatorship to another state; providing criteria for accepting transfer of guardianship or conservatorship from another state; providing for registration of guardianship and protective orders; providing that registration of a guardianship or protective order from another state allows the guardian or conservator to exercise his or her powers as allowed by law in this state; requiring consideration of the need to promote uniformity of the law when applying and construing this act; modifying, limiting and superceding certain provisions of the federal Electronic Signatures in Global and National Commerce Act; providing that this act applies to certain guardianship and protective proceedings begun on or after passage of the act; and providing that this act applies to certain guardianship and protective proceedings regardless of when they were begun.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §44C-1-1, §44C-1-2, §44C-1-3, §44C-1-4, §44C-1-5, §44C-1-6, §44C-2-1, §44C-2-2, §44C-2-3, §44C-2-4, §44C-2-5, §44C-2-6, §44C-2-7, §44C-2-8, §44C-3-1, §44C-3-2, §44C-4-1, §44C-4-2, §44C-4-3, §44C-5-1, §44C-5-2 and §44C-5-3, all to read as follows:

CHAPTER 44C. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT.
ARTICLE 1. GENERAL PROVISIONS.

§44C-1-1. Short title.

This chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and is cited in this chapter as “this act”.

§44C-1-2. Definitions.

For purposes of this chapter:

(1) “Adult” means an individual who has attained eighteen years of age.

(2) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under section one, article one, chapter forty-four-a of this code.

(3) “Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety or welfare and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.

(4) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a
person appointed under article two, chapter forty-four-a of this code.

(5) “Guardianship order” means an order appointing a guardian.

(6) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(7) “Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(8) “Incapacitated person” means an adult for whom a guardian has been appointed.

(9) “Party” means the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

(10) “Person”, except in the term “incapacitated person or protected 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.

(11) “Protected person”, for purposes of this chapter only, means an adult for whom a protective order, as defined in this section, has been issued. "Protected person", as used in this chapter, has the meaning ascribed to it in subsection
(12) "Protective order," for purposes of this chapter only and notwithstanding the meaning which the term may have outside of this chapter, means an order appointing a conservator or other order related to management of an adult’s property.

(13) "Protective proceeding" means a judicial proceeding in which a protective order, as defined in this section, is sought or has been issued.

(14) "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.

(15) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(16) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. In determining whether a respondent has a significant connection with a particular state, the court shall consider:

(A) The location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding;

(B) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(C) The location of the respondent’s property; and
(D) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship and receipt of services.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.

§44C-1-3. International application.

1 A court of this state may treat a foreign country as if it were a state for the purpose of applying this act.

§44C-1-4. Communication between courts.

1 (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

8 (b) Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

§44C-1-5. Cooperation between courts.

1 (a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

4 (1) Hold an evidentiary hearing;
(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent;

(4) Order any appropriate investigation of a person involved in a proceeding;

(5) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (1) of this subsection or any other proceeding, any evidence otherwise produced under subdivision (2) of this subsection and any evaluation or assessment prepared in compliance with an order under subdivision (3) or (4) of this subsection;

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(7) Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 C. F. R. Section 164.504, as amended.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§44C-1-6. Taking testimony in another state.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by
deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

ARTICLE 2. JURISDICTION.

§44C-2-1. Exclusive basis.
§44C-2-2. Determination of jurisdiction.
§44C-2-4. Exclusive and continuing jurisdiction.
§44C-2-5. Appropriate forum.
§44C-2-6. Jurisdiction declined by reason of conduct.
§44C-2-7. Notice of proceeding.
§44C-2-8. Proceedings in more than one state.

§44C-2-1. Exclusive basis.

Other provisions of this code notwithstanding, this article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

§44C-2-2. Determination of jurisdiction.

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:
Ch. 220] UNIFORM LAWS 1751

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(A) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section five of this article;

(3) This state does not have jurisdiction under either subdivision (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section three of this article are met.


(a) A court of this state lacking jurisdiction under section two of this article has special jurisdiction to do any of the following:
1 (1) Appoint a guardian in an emergency for a term not
2 exceeding ninety days for a respondent who is physically
3 present in this state;

4 (2) Issue a protective order with respect to real or tangible
5 personal property located in this state;

6 (3) Appoint a guardian or conservator for an
7 incapacitated or protected person for whom a provisional
8 order to transfer the proceeding from another state has been
9 issued under procedures similar to those provided in section
10 one, article three of this chapter.

11 If a petition for the appointment of a guardian in an
12 emergency is brought in this state and this state was not the
13 respondent’s home state on the date the petition was filed, the
14 court shall dismiss the proceeding at the request of the court
15 of the home state, if any, whether dismissal is requested
16 before or after the emergency appointment.

§44C-2-4. Exclusive and continuing jurisdiction.

1 Except as otherwise provided in section three of this
2 article, a court that has appointed a guardian or issued a
3 protective order consistent with this act has exclusive and
4 continuing jurisdiction over the proceeding until it is
5 terminated by the court or the appointment or order expires
6 by its own terms.

§44C-2-5. Appropriate forum.

1 (a) A court of this state having jurisdiction under section
2 one, article one, chapter forty-four-a of this code or section
3 two of this article to appoint a guardian or issue a protective
4 order may decline to exercise its jurisdiction if it determines
5 at any time that a court of another state is a more appropriate
6 forum.
(b) If a court of this state declines to exercise its jurisdiction under subsection (a) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) Any expressed preference of the respondent;

(2) Whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;

(3) The length of time the respondent was physically present in or was a legal resident of this or another state;

(4) The distance of the respondent from the court in each state;

(5) The financial circumstances of the respondent’s estate;

(6) The nature and location of the evidence;

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) The familiarity of the court of each state with the facts and issues in the proceeding; and

(9) If an appointment were made, the court’s ability to monitor the conduct of the guardian or conservator.
§44C-2-6. Jurisdiction declined by reason of conduct.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) Decline to exercise jurisdiction;

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent’s property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) Continue to exercise jurisdiction after considering:

(A) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court’s jurisdiction;

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection (c), section five of this article; and

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section two of this article.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney’s fees,
investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs or expenses of any kind against this state or a governmental subdivision, agency or instrumentality of this state unless authorized by law other than this act.

§44C-2-7. Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent’s home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent’s home state. The notice must be given in the same manner as notice is required to be given in this state.

§44C-2-8. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section three of this article, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section two of this article, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to said section before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section two of this article, whether at the time the petition is filed or at any time before the appointment or
issuance of the order, the court shall stay the proceeding and
communicate with the court in the other state. If the court in
the other state has jurisdiction, the court in this state shall
dismiss the petition unless the court in the other state
determines that the court in this state is a more appropriate
forum.

ARTICLE 3. TRANSFER OF GUARDIANSHIP OR
CONSERVATORSHIP.

§44C-3-1. Transfer to another state.
§44C-3-2. Accepting guardianship or conservatorship transferred from another state.

§44C-3-1. Transfer to another state.

(a) A guardian or conservator appointed in this state may
petition the court to transfer the guardianship or
conservatorship to another state.

(b) Notice of a petition under subsection (a) of this
section must be given to the persons who would be entitled
to notice of a petition in this state for the appointment of a
guardian or conservator.

(c) On the court’s own motion or on request of the
guardian or conservator, the incapacitated or protected
person, or other person required to be notified of the petition,
the court shall hold a hearing on a petition filed pursuant to
subsection (a) of this section.

(d) The court shall issue an order provisionally granting
a petition to transfer a guardianship and shall direct the
guardian to petition for guardianship in the other state if the
court is satisfied that the guardianship will be accepted by the
court in the other state and the court finds that:

(1) The incapacitated person is physically present in or is
reasonably expected to move permanently to the other state;
(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship or a protective order in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person’s property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section two of this article; and

(2) The documents required to terminate a guardianship or conservatorship in this state.
§44C-3-2. Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section one of this article, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state’s provisional order of transfer.

(b) Notice of a petition under subsection (a) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court’s own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) of this section unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a
final order issued under provisions similar to section one of this article transferring the proceeding to this state.

(f) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship or protective order from the other state, including the determination of the incapacitated or protected person’s incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under article two, chapter forty-four-a of this code if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

ARTICLE 4. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES.

§44C-4-1. Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.
§44C-4-2. Registration of protective orders.

1 If a conservator has been appointed in another state and
2 a petition for a protective order is not pending in this state,
3 the conservator appointed in the other state, after giving
4 notice to the appointing court of an intent to register, may
5 register the protective order in this state by filing as a foreign
6 judgment in a court of this state, in any county in which
7 property belonging to the protected person is located,
8 certified copies of the order and letters of office and of any
9 bond.

§44C-4-3. Effect of registration.

1 (a) Upon registration of a guardianship or protective
2 order from another state, the guardian or conservator may
3 exercise in this state all powers authorized in the order of
4 appointment except as prohibited under the laws of this state,
5 including maintaining actions and proceedings in this state
6 and, if the guardian or conservator is not a resident of this
7 state, subject to any conditions imposed upon nonresident
8 parties.

9 (b) A court of this state may grant any relief available
10 under this act and other law of this state to enforce a
11 registered order.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§44C-5-1. Uniformity of application and construction.
§44C-5-2. Relation to Electronic Signatures in Global and National Commerce Act.
§44C-5-3. Transitional provision.

§44C-5-1. Uniformity of application and construction.

1 In applying and construing this uniform act,
2 consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among
4 states that enact it.
§44C-5-2. Relation to Electronic Signatures in Global and National Commerce Act.

This act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001, et seq., but does not modify, limit or supersedes Section 101(c) of said act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of said act, 15 U. S. C. Section 7003(b).

§44C-5-3. Transitional provision.

(a) This act applies to guardianship and protective proceedings begun on or after the effective date of this chapter as enacted by the seventy-ninth Legislature of West Virginia in 2009.

(b) Articles one, three and four and sections five hundred one and five hundred two of this article apply to proceedings begun before the effective date, regardless of whether a guardianship or protective order has been issued.

CHAPTER 221

(Com. Sub. for H.B. 2863 - By Delegates Manchin, Perdue, Schadler, White, Caputo, Morgan, M. Poling, Webster, Boggs and Fragale)

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §5G-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §22C-1-5 of
said code; to amend and reenact §24-2-11 of said code; to amend and reenact §31-15A-3 and §31-15A-6 of said code, all relating to construction of state utility projects; putting limitations on engineering design and construction inspection fees for state and state subdivision sponsored utility construction; requiring all Water Development Authority sponsored utility projects to get authorization prior to removal of proposed customers of a project; requiring the governmental agency administering the utility project to perform an annual maintenance audit of the utility; altering the number of customers or proposed customers protesting requiring a formal hearing; reducing time periods for the Public Service Commission to review and approve certain applications by public utilities for certificate of public convenience and necessity; and providing for additional members of the West Virginia Infrastructure and Jobs Development Council.

Be it enacted by the Legislature of West Virginia:

That §5G-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §22C-1-5 of said code be amended and reenacted; that §24-2-11 of said code be amended and reenacted; and that §31-15A-3 and §31-15A-6 of said code be amended and reenacted, all to read as follows:

Chapter
5G. Procurement of Architect-engineer Services by State and its Subdivisions.
22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.
§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost $250,000 or more.

In the procurement of architectural and engineering services for projects estimated to cost $250,000 or more, the director of purchasing shall encourage firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project. All jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A committee of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service: Provided, That on projects funded wholly or in part by school building authority moneys, in accordance with sections fifteen and sixteen, article nine-d, chapter eighteen of this code, two of said three firms shall have had offices within this state for a period of at least one year prior to submitting an expression of interest regarding a project funded by school building authority moneys. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services or both. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with
the firm of second choice shall commence. Failing accord
with the second most qualified professional firm, the
committee shall undertake price negotiations with the third
most qualified professional firm. Should the agency be
unable to negotiate a satisfactory contract with any of the
selected professional firms, it shall select additional
professional firms in order of their competence and
qualifications and it shall continue negotiations in accordance
with this section until an agreement is reached: \textit{Provided,}
\textit{however,} That county boards of education may either elect to
start the selection process over in the original order of
preference or it may select additional professional firms in
order of their competence and qualifications and it shall
continue negotiations in accordance with this section until an
agreement is reached: \textit{Provided further,} That for any water or
wastewater construction project the engineering design and
construction inspection costs may not exceed the amount
calculated pursuant to the compensation curves for consulting
engineering services based upon project construction costs
published by the American Society of Civil Engineers
manual of practice, unless granted a variance by the
Infrastructure and Jobs Development Council established
pursuant to article fifteen-a, chapter thirty-one of this code.

CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND
COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-5. Authority may construct, finance, maintain, etc.,
water development projects; loans to
governmental agencies are subject to terms of
loan agreements.

To accomplish the public policies and purposes and to
meet the responsibility of the state as set forth in this article,
the water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when the refinancing is in conjunction with the financing for a new water development project regardless of the source of the financing for the new project: Provided, That the amount of the refinancing may not exceed 50% of the aggregate amount of the refinancing of an existing project and the financing of a new project; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of projects, or finance projects, in whole or in part, by loans to governmental agencies. A water development project may not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the Secretary of the Department of Environmental Protection or in the process of preparation by the secretary and to be consistent with the standards set by the state environmental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing projects or for making a loan or grant for projects shall include a finding by the authority that the determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include, without limitation, the following provisions:

(1) The cost of the project, the amount of the loan, the terms of repayment of the loan and the security therefor,
which may include, in addition to the pledge of all revenues from the project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on the project;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project, including engineering fees and other administrative costs relating to development of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of the governmental agency under the loan agreement, increase service charges from persons using the project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of the governmental agency under the loan agreement;

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project;

(5) The number of proposed customers and their physical locations within the project, and providing as a condition of the agreement, that no proposed customers listed in the project application agreement may be removed from inclusion in the project without prior authorization of the board; and
(6) The agreement of the governmental agency to perform an annual maintenance audit which maintenance audit shall be submitted to the board and the Public Service Commission of West Virginia.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person or corporation may not begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no substantial protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.
(c) Any public utility, person or corporation subject to the provisions of this section shall give the commission at least thirty days’ notice of the filing of any the application for a certificate of public convenience and necessity under this section: Provided, That the commission may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application for decision following a hearing: Provided, That if the application is for authority to construct a water and sewer project and the projected total cost is less than $10 million, the Commission shall render its final decision within two hundred twenty-five days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one hundred eighty days after filing of the application: Provided, That if a substantial protest is received within thirty days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within two hundred seventy days or two hundred twenty-five days of the filing of the application, whichever is applicable as determined in subsection (d).

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or section eleven-a of this article is greater than $50 million, the commission shall render its final decision on any such
application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the time-frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council, is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.
Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council.

§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council.

(a) The West Virginia Infrastructure and Jobs Development Council is continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of thirteen members, including:

(1) The Governor or designee;

(2) The Executive Director of the Housing Development Fund or his or her designee;

(3) The Director of the Division of Environmental Protection or his or her designee;
(4) The Director of the Economic Development Authority or his or her designee;

(5) The Director of the Water Development Authority or his or her designee;

(6) The Director of the Division of Health or his or her designee;

(7) The Chairman of the Public Service Commission or his or her designee; and

(8) Six members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district. No more than one member representing the general public may be a resident of the same county.

(c) The Governor shall appoint the public members of the Council who shall serve three-year staggered terms.

(d) The Commissioner of the Division of Highways, the Executive Director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the Chancellor of the Higher Education Policy commission and the Chancellor of the West Virginia Council for Community and Technical College Education serve as advisory members of the council. The advisory members shall be ex officio, nonvoting members of the Council.

(e) The Governor shall appoint the legislative members of the council: Provided, That no more than three of the legislative members may be of the same political party.

(f) The Governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board.
(g) The Governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the Council and who shall keep records of its proceedings. Seven members of the Council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the Council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(h) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the council in a manner consistent with guidelines of the travel management office of the Department of Administration.

(i) The council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the Economic Development Authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The Governor's civil contingent fund is not subject to council review with regard to projects or infrastructure projects funded through the Governor's Civil Contingent Fund.

(j) The Water Development Authority shall provide office space for the council and each governmental agency represented on the council shall provide staff support for the council in the manner determined appropriate by the council.

(k) The council shall invite to each meeting one or more representatives of the United States Department of
Agriculture, Rural Economic Community Development, the United States Economic Development Agency and the United States Army Corps of Engineers or any successors thereto. The council shall invite other appropriate parties as is necessary to effectuate the purposes of this article.

§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

(a) In addition to the powers set forth elsewhere in this article, the council is granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

1. Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

2. Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the Housing Development Fund, but which are consistent with the mandates of this article and recommend to the Water Development Authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

3. Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

4. Make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment
systems and an assessment of current and future needs. The
assessment shall identify the areas of the state which do not
have adequate public water or sewage systems and offer
recommendations for the construction of new facilities or the
extension or expansion of existing facilities to meet the
identified needs. The council shall include in the assessment
an identification of the obstacles, issues and problems which
prevent or inhibit development of adequate infrastructure
throughout the state, including financial, governmental,
physical, or geographical factors and make recommendation
as the council considers appropriate regarding the obstacles,
issues or problems identified. This comprehensive inventory
and assessment shall be updated at least once in every
three-year period after the initial assessment and inventory is
completed in 1996.

(c) The council shall study the viability of the
consolidation of public service districts throughout the state.
The council shall report their findings and conclusions on or
before January 16, 1995 to the Governor, Speaker of the
House of Delegates and President of the Senate.

CHAPTER 222

(Com. Sub. for S.B. 537 - By Senators Minard and McCabe)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to repeal §23-5-17 and §23-5-18 of the Code of West
Virginia, 1931, as amended; to amend and reenact §23-2-1d of
said code; to amend and reenact §23-2A-1 of said code; to
amend and reenact §23-2C-8, §23-2C-15, §23-2C-17 and §23-
2C-21 of said code; to amend and reenact §23-4-1c, §23-4-6b, §23-4-8, §23-4-8c and §23-4-15b of said code; to amend said code by adding thereto a new section, designated §23-4-8d; to amend and reenact §23-5-1, §23-5-3 and §23-5-16 of said code; and to amend and reenact §33-2-22 of said code, all relating to workers’ compensation; eliminating obsolete sunset provisions; redefining the responsibility of prime contractors to injured employees of their subcontractors; clarifying subrogation rights with respect to employees injured by third parties; authorizing negotiation of amount to accept as subrogation in Old Fund claims; deleting mandatory recovery fee to Insurance Commissioner in certain subrogation claims; providing for a unitary decision-making process in claims involving the Uninsured Employer Fund; changing date on which governmental bodies may purchase workers’ compensation insurance in the private market and on which the employers’ mutual insurance company may nonrenew such bodies; awarding attorney fees and costs if workers’ compensation temporary disability benefits claim is unreasonably denied; extending the scope of permissible remedies to include those in the general insurance code; permitting the recovery of administrative costs in certain actions; authorizing expedited review by the Office of Judges when a request to reopen temporary total benefits is denied; eliminating mandatory allocation in hearing loss claims; providing that claims for medical benefits in occupational pneumoconiosis claims may be made at any time; clarifying that a sixty-day period applies to various protests; extending the jurisdiction of the Office of Judges to hear certain protests; clarifying permissible method of delivering payment of benefits; establishing reimbursement for certain claimant travel expenses; authorizing award of attorney fees in certain final settlements; clarifying licensing requirements for third-party administrators; mandating conditional payments in certain instances; authorizing the Insurance Commissioner to compromise and settle claims for moneys due the Old Fund and Uninsured Employer Fund; and requiring report to Legislature regarding settlements.
Be it enacted by the Legislature of West Virginia:

That §23-5-17 and §23-5-18 of the Code of West Virginia, 1931, as amended, be repealed; that §23-2-1d of said code be amended and reenacted; that §23-2A-1 of said code be amended and reenacted; that §23-2C-8, §23-2C-15, §23-2C-17 and §23-2C-21 of said code be amended and reenacted; that §23-4-1c, §23-4-6b, §23-4-8, §23-4-8c and §23-4-15b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-4-8d; that §23-5-1, §23-5-3 and §23-5-16 of said code be amended and reenacted; and that §33-2-22 of said code be amended and reenacted, all to read as follows:

Chapter 23. Employers and Employees Subject to Chapter; Extraterritorial Coverage.

§23-2-1d. Prime contractors and subcontractors liability.

(a) For the exclusive purposes of this section, the term "employer" as defined in section one of this article includes any primary contractor who regularly subcontracts with other employers for the performance of any work arising from or as a result of the primary contractor's own contract: Provided, That a subcontractor does not include one providing goods rather than services. For purposes of this subsection, extraction of natural resources is a provision of services. In
the event that a subcontracting employer defaults on its obligations to make payments to the commission, then the primary contractor is liable for the payments. However, nothing contained in this section shall extend or except to a primary contractor or subcontractors the provisions of section six, six-a or eight of this article. This section is applicable only with regard to subcontractors with whom the primary contractor has a contract for any work or services for a period longer than sixty days: Provided, however, That this section is also applicable to contracts for consecutive periods of work that total more than sixty days. It is not applicable to the primary contractor with regard to sub-subcontractors. However, a subcontractor for the purposes of a contract with the primary contractor can itself become a primary contractor with regard to other employers with whom it subcontracts. It is the intent of the Legislature that no contractor, whether a primary contractor, subcontractor or sub-subcontractor, escape or avoid liability for any workers' compensation premium, assessment or tax. The executive director shall propose for promulgation a rule to effect this purpose on or before December 31, 2003.

(b) A primary contractor may avoid initial liability under subsection (a) of this section if it obtains from the executive director, prior to the initial performance of any work by the subcontractor's employees, a certificate that the subcontractor is in good standing with the Workers' Compensation Fund.

(1) Failure to obtain the certificate of good standing prior to the initial performance of any work by the subcontractor results in the primary contractor being equally liable with the subcontractor for all delinquent and defaulted premium taxes, premium deposits, interest and other penalties arising during the life of the contract or due to work performed in furtherance of the contract: Provided, That the commission is entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the
commission may impose other penalties on the primary contractor or on the subcontractor, or both.

(2) In order to continue avoiding liability under this section, the primary contractor shall request that the commission inform the primary contractor of any subsequent default by the subcontractor. In the event that the subcontractor does default, the commission shall notify the primary contractor of the default by placing a notice in the certified United States mail, postage prepaid, and addressed to the primary contractor at the address furnished to the commission by the primary contractor. The mailing is good and sufficient notice to the primary contractor of the subcontractor's default. However, the primary contractor is not liable under this section until the first day of the calendar quarter following the calendar quarter in which the notice is given and then the liability is only for that following calendar quarter and thereafter and only if the subcontract has not been terminated: Provided, That the commission is entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commission may impose other penalties on the primary contractor or on the subcontractor, or both.

(c) In any situation where a subcontractor defaults with regard to its payment obligations under this chapter or fails to provide a certificate of good standing as provided in this section, the default or failure is good and sufficient cause for a primary contractor to hold the subcontractor responsible and to seek reimbursement or indemnification for any amounts paid on behalf of the subcontractor to avoid or cure a workers' compensation default, plus related costs, including reasonable attorneys' fees, and to terminate its subcontract with the subcontractor notwithstanding any provision to the contrary in the contract.
(d) The provisions of this section are applicable only to those contracts entered into or extended on or after January 1, 1994.

(e) The commission may take any action authorized by section five-a of this article in furtherance of its efforts to collect amounts due from the primary contractor under this section.

(f) Effective upon termination of the commission, subsections (a) through (e), inclusive, of this section shall be applicable only to unpaid premiums due the commission or the Old Fund as provided in article two-c of this chapter.

(g) The Legislature finds that every prime contractor should be responsible to ensure that any subcontractor with which it directly contracts is either self-insured or maintains workers’ compensation coverage throughout the periods during which the services of a subcontractor are used and, further, if the subcontractor is neither self-insured nor covered, then the prime contractor rather than the Uninsured Employer Fund should be responsible for the payment of statutory benefits. It is also the intent of the Legislature that this section not be used as the basis for expanding the liability of a prime contractor beyond the limited purpose of providing coverage in the limited circumstances and in the manner expressly addressed by this section: Provided, That receipt by the prime contractor of a certificate of coverage from a subcontractor shall be deemed to relieve the prime contractor of responsibility regarding the subcontractor’s workers’ compensation coverage.

(h) On after the effective date of the reenactment of this section in 2009, if an employee of a subcontractor suffers an injury or disease and, on the date of injury or last exposure, his or her employer did not have workers' compensation coverage or was not an approved self-insured employer, and
the prime contractor did not obtain certification of coverage from the subcontractor, then that employee may file a claim against the prime contractor for which the subcontractor performed services on the date of injury or last exposure, and such claim shall be administered in the same manner as claims filed by injured employees of the prime contractor: 

Provided, That a subcontractor that subcontracts with another subcontractor shall, with respect to such subcontract, is the prime contractor for the purposes of this section: Provided, however, That the provisions of this subsection do not relieve a subcontractor from any requirements of this chapter, including the duty to maintain coverage on its employees. The subcontractor shall provide proof of continuing coverage to the prime contractor by providing a certificate showing current as well as renewal or replacement coverage during the term of the contract between the prime contractor and the subcontractor. The subcontractor shall provide notice to the prime contractor within two business days of cancellation of expiration of coverage.

(i) Notwithstanding that an injured employee of a subcontractor is eligible for workers’ compensation benefits pursuant to this section from the prime contractor’s carrier or the self-insured prime contractor, whichever is applicable, a subcontractor who has failed to maintain workers’ compensation coverage on its employees:

(1) May not claim the exemption from liability provided by sections six and six-a of this article;

(2) May be held liable to an injured employee pursuant to the provisions of section eight of this article; and

(3) Is the designated employer for the purposes of any “deliberate intention” action brought by the injured worker pursuant to the provisions of section two, article four of this chapter.
(j) If a claim of an injured employee of a subcontractor is accepted or conditionally accepted into the Uninsured Employer Fund, both the prime contractor and subcontractor are jointly and severally liable for any payments made by the fund, and the Insurance Commissioner may seek recovery of the payments, plus administrative costs and attorneys’ fees, from the prime contractor, the subcontractor, or both: Provided, That a prime contractor who is held liable pursuant to this subsection for the payment of benefits to an injured employee of a subcontractor may recover the amount of such payments from the subcontractor, plus reasonable attorneys’ fee and costs: Provided, however, That if a prime contractor has performed due diligence in all matters requiring an verifying a subcontractor’s maintenance of insurance coverage, than the prime contractor is not liable for any claim made hereunder against the subcontractor.

ARTICLE 2A. SUBROGATION.


(a) Where a compensable injury or death is caused, in whole or in part, by the act or omission of a third party, the injured worker or, if he or she is deceased or physically or mentally incompetent, his or her dependents or personal representative are entitled to compensation under the provisions of this chapter, and shall not by having received compensation be precluded from making claim against the third party.

(b) Notwithstanding the provisions of subsection (a) of this section, if an injured worker, his or her dependents or his or her personal representative makes a claim against the third party and recovers any sum for the claim:

(1) With respect to any claim arising from a right of action that arose or accrued, in whole or in part, on or after
January 1, 2006, the private carrier or self-insured employer, whichever is applicable, shall be allowed statutory subrogation with regard to indemnity and medical benefits paid as of the date of the recovery.

(2) With respect to any claim arising from a right of action that arose or accrued, in whole or in part, prior to January 1, 2006, the Insurance Commissioner and the successor to the commission shall be allowed statutory subrogation with regard to only medical payments paid as of the date of the recovery: Provided, That with respect to any recovery arising out of a cause of action that arose or accrued prior to July 1, 2003, any money received by the commissioner or self-insured employer as subrogation to medical benefits expended on behalf of the injured or deceased worker shall not exceed fifty percent of the amount received from the third party as a result of the claim made by the injured worker, his or her dependents or personal representative, after payment of attorneys' fee and costs, if such exist.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, the Insurance Commissioner, acting as administrator of the Uninsured Employer Fund, shall be allowed statutory subrogation with regard to indemnity and medical benefits paid and to be paid from such fund regardless of the date on which the cause of action arose.

(c) For claims that arose or accrued, in whole or in part, prior to the effective date of the reenactment of this section in 2009, and all claims thereafter, the party entitled to subrogation shall permit the deduction from the amount received reasonable attorneys' fees and reasonable costs and may negotiate the amount to accept as subrogation.

(d) In the event that an injured worker, his or her dependents or personal representative makes a claim against
a third party, there shall be, and there is hereby created, a statutory subrogation lien upon the moneys received which shall exist in favor of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable.

(e) It is the duty of the injured worker, his or her dependents, his or her personal representative or his or her attorney to give reasonable notice to the Insurance Commissioner, private carrier or self-insured employer after a claim is filed against the third party and prior to the disbursement of any third-party recovery. The statutory subrogation described in this section does not apply to uninsured and underinsured motorist coverage or any other insurance coverage purchased by the injured worker or on behalf of the injured worker. If the injured worker obtains a recovery from a third party and the injured worker, personal representative or the injured worker's attorney fails to protect the statutory right of subrogation created herein, the injured worker, personal representative and the injured worker's attorney shall lose the right to retain attorney fees and costs out of the subrogation amount. In addition, such failure creates a cause of action for the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, against the injured worker, personal representative and the injured worker's attorney for the amount of the full subrogation amount and the reasonable fees and costs associated with any such cause of action.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.


(a) The Workers' Compensation Uninsured Employer Fund shall be governed by the following:
(1) All money and securities in the fund must be held by the State Treasurer as custodian thereof to be used solely as provided in this article.

(2) The State Treasurer may disburse money from the fund only upon written requisition of the Insurance Commissioner.

(3) **Assessments.** -- The Insurance Commissioner shall assess each private carrier and may assess self-insured employers an amount to be deposited in the fund. The assessment may be collected by each private carrier from its policyholders in the form of a policy surcharge. To establish the amount of the assessment, the Insurance Commissioner shall determine the amount of money necessary to maintain an appropriate balance in the fund for each fiscal year and shall allocate a portion of that amount to be payable by each of the groups subject to the assessment. After allocating the amounts payable by each group, the Insurance Commissioner shall apply an assessment rate to:

(A) Private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received;

(B) Self-insured employers, if assessed, that results in an equitable distribution of costs among the self-insured employers and is based upon expected annual expenditures for claims; and

(C) Any other groups assessed that results in an equitable distribution of costs among them and is based upon expected annual expenditures for claims or premium to be received.

(4) The Industrial Council may adopt rules for the establishment and administration of the assessment
methodologies, rates, payments and any penalties that it
determines are necessary to carry out the provisions of this
section.

(b) Payments from the fund. --

(1) Except as otherwise provided in this subsection, an
injured employee of any employer required to be covered
under this chapter who has failed to obtain coverage may
receive compensation from the Uninsured Employer Fund if
such employee meets all jurisdictional and entitlement
provisions of this chapter, files a claim with the Insurance
Commissioner and makes an irrevocable assignment to the
Insurance Commissioner of a right to be subrogated to the
rights of the injured employee.

(2) Employees who are injured while employed by a self-
insured employer are ineligible for benefits from the
Workers' Compensation Uninsured Employer Fund.

(c) Initial determination upon receipt of a claim. --

If a claim is filed against the Uninsured Employer Fund,
the Insurance Commissioner or his or her third-party
administrator shall: (1) Accept the claim into the fund if it is
determined that the employer was required to maintain
workers' compensation coverage with respect to the injured
worker but failed to do so; (2) reject the claim if it is
determined that the employer maintained such coverage or
was not required to do so; or (3) in a claim involving the
availability of benefits pursuant to section one-d, article two
of this chapter, either reject or conditionally accept the claim.
An aggrieved party may file a protest with the Office of
Judges to any decision by the Insurance Commissioner or the
third-party administrator to accept or reject a claim into the
fund, as well as to any claims decisions made with respect to
any claim accepted into the fund and such protests shall be
determined in the same manner as disputed claims are
determined pursuant to the provisions of article five of this chapter: Provided, That in any proceeding before the Office of Judges involving the decision to accept or refuse to accept a claim into the fund, the employer has the burden of proving that it either provided mandatory workers' compensation insurance coverage or that it was not required to do so.

(d) Employer liability. --

(1) Any employer who has failed to provide mandatory coverage required by the provisions of this chapter is liable for all payments made and to be made on its behalf, including any benefits, administrative costs and attorney's fees paid from the fund or incurred by the Insurance Commissioner, plus interest calculated in accordance with the provisions of section thirteen, article two of this chapter.

(2) The Insurance Commissioner:

(A) May bring a civil action in a court of competent jurisdiction to recover from the employer the amounts set forth in subdivision (1) of this subsection. In any such action, the Insurance Commissioner may also recover the present value of the estimated future payments to be made on the employer's behalf and administrative costs and attorney's fees attributable to such claim: Provided, That the failure of the Insurance Commissioner to include a claim for future payments shall not preclude one or more subsequent actions for such amounts;

(B) May enter into a contract with any person, including the third-party administrator of the Uninsured Employer Fund, to assist in the collection of any liability of an uninsured employer; and

(C) In lieu of a civil action, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.
(3) In addition to any other liabilities provided in this section, the Insurance Commissioner may impose an administrative penalty of not more than $10,000 against an employer if the employer fails to provide mandatory coverage required by this chapter. All penalties and other moneys collected pursuant to this section shall be deposited into the Workers' Compensation Uninsured Employer Fund.


(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 has 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 July 1, 2008, 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 June 30,
Provided, however, That the company may not cancel or refuse to renew a policy of a state or local governmental body prior to July 1, 2011, except for failure of consideration to be paid by the policyholder or for refusal to comply with a premium audit. 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 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 January 1, 2009, the company may decline to offer coverage to any applicant. Private carriers and, effective January 1, 2009, 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
61 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;

(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
with the Insurance Commissioner in accordance with article
forty-six, chapter thirty-three of this 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 a private
carrier or self-insured employer, 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 this chapter.
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 his or her self-insured employer or his or her employer’s private carrier 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.

§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

(a) No civil action may be brought or maintained by an employee against a private carrier or a third-party administrator, or any employee or agent of a private carrier or third-party administrator, who violates any provision of this chapter or chapter thirty-three of this code.

(b) Any administrative fines or remedies provided in this chapter or chapter thirty-three of this code or rules promulgated by the Workers' Compensation Commission or
the Insurance Commissioner are the exclusive civil remedies for any violation of this chapter committed by a private carrier or a third-party administrator or any agent or employee of a private carrier or a third-party administrator.

(c) Upon a determination by the Office of Judges that a denial of compensability, a denial of an award of temporary total disability or a denial of an authorization for medical benefits was unreasonable, reasonable attorney's fees and the costs actually incurred in the process of obtaining a reversal of the denial shall be awarded to the claimant and paid by the private carrier or self-insured employer which issued the unreasonable denial. A denial is unreasonable if, after submission by or on behalf of the claimant, of evidence of the compensability of the claim, the entitlement to temporary total disability benefits or medical benefits, the private carrier or self-insured employer is unable to demonstrate that it had evidence or a legal basis supported by legal authority at the time of the denial which is relevant and probative and supports the denial of the award or authorization. Payment of attorney's fees and costs awarded under this subsection will be made to the claimant at the conclusion of litigation, including all appeals, of the claimant's protest of the denial.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission, successor to the commission, private carriers and self-insured employers to collect payments improperly made.

§23-4-6b. Occupational hearing loss claims.

§23-4-8. Physical examination of claimant.

§23-4-8c. Occupational Pneumoconiosis Board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

§23-4-8d. Occupational pneumoconiosis claims never closed for medical benefits.

§23-4-15b. Determination of nonmedical questions; claims for occupational pneumoconiosis; hearing.
§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission, successor to the commission, private carriers and self-insured employers to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article and enter an order giving all parties immediate notice of the decision.

7 (1) The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may enter an order conditionally approving the claimant's application if it finds that obtaining additional medical evidence or evaluations or other evidence related to the issue of compensability would aid the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, in making a correct final decision. Benefits shall be paid during the period of conditional approval; however, if the final decision is one that rejects the claim, the payments shall be considered an overpayment. The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may only recover the amount of the overpayment as provided for in subsection (h) of this section.

21 (2) In making a determination regarding the compensability of a newly filed claim or upon a filing for the reopening of a prior claim pursuant to the provisions of section sixteen of this article based upon an allegation of recurrence, reinjury, aggravation or progression of the previous compensable injury or in the case of a filing of a request for any other benefits under the provisions of this chapter, the Insurance Commissioner, private carrier or self-
insured employer, whichever is applicable, shall consider the
date of the filing of the claim for benefits for a determination
of the following:

(A) Whether the claimant had a scheduled shutdown
beginning within one week of the date of the filing;

(B) Whether the claimant received notice within sixty
days of the filing that his or her employment position was to
be eliminated, including, but not limited to, the claimant's
worksite, a layoff or the elimination of the claimant's
employment position;

(C) Whether the claimant is receiving unemployment
compensation benefits at the time of the filing; or

(D) Whether the claimant has received unemployment
compensation benefits within sixty days of the filing. In the
event of an affirmative finding upon any of these four factors,
the finding shall be given probative weight in the overall
determination of the compensability of the claim or of the
merits of the reopening request.

(3) Any party may object to the order of the Insurance
Commissioner, private carrier or self-insured employer,
whichever is applicable, and obtain an evidentiary hearing as
provided in section one, article five of this chapter: Provided,
That if the successor to the commissioner, other private
carrier or self-insured, whichever is applicable, fails to timely
issue a ruling upon any application or motion as provided by
law, or if the claimant files a timely protest to the ruling of a
self-insured employer, private carrier or other issuing entity,
denying the compensability of the claim, denying temporary
total disability benefits or denying medical authorization, the
Office of Judges shall provide a hearing on the protest on an
expedited basis as determined by rule of the Office of Judges.
(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in section five of this article, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and the payment of the expenses provided for in subsection (a), section three of this article, relating to the injury, without waiting for the expiration of the thirty-day period during which objections may be filed to the findings as provided in section one, article five of this chapter. The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall enter an order commencing the payment of temporary total disability or medical benefits within fifteen working days of receipt of either the employee's or employer's report of injury, whichever is received sooner, and also upon receipt of either a proper physician's report or any information necessary for a determination. The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall give to the parties immediate notice of any order granting temporary total disability or medical benefits. When an order granting temporary total disability benefits is made, the claimant's return-to-work potential shall be assessed. The Insurance Commissioner may schedule medical and vocational evaluation of the claimant and assign appropriate personnel to expedite the claimant's return to work as soon as reasonably possible.

(c) The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of the benefits. The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may not enter an order
granting prospective temporary total disability benefits for a period of more than ninety days: Provided, That when the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the Insurance Commissioner, private carrier or self-insured employer shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed ninety days and shall give immediate notice to all parties of the decision.

(d) Upon receipt of the first report of injury in a claim, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish this information within fifteen days from the date the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the commission obtains from reports made pursuant to subsection (b), section two, article two of this chapter. If no wages have been reported, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall make the payments at the rate the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, finds would be justified by the usual rate of pay for the occupation of the injured employee. The rate of benefits shall be adjusted both retroactively and prospectively upon receipt of proper wage information. The Insurance Commissioner shall have access to all wage information in the possession of any state agency.

(e) Subject to the limitations set forth in section sixteen of this article, upon a finding of the Insurance Commissioner,
private carrier or self-insured employer, whichever is applicable, that a claimant who has sustained a previous compensable injury which has been closed by order, or by the claimant's return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, payment of temporary total disability benefits to the claimant in the amount provided for in sections six and fourteen of this article shall immediately commence, and the expenses provided for in subsection (a), section three of this article, relating to the disability, without waiting for the expiration of the thirty-day period during which objections may be filed. Immediate notice to the parties of the decision shall be given.

(f) The Insurance Commissioner, private carrier or self-insured employer shall deliver amounts due for temporary total disability benefits directly to the claimant.

(g) Where the employer has elected to carry its own risk under section nine, article two of this chapter, and upon the findings aforesaid, the self-insured employer shall immediately pay the amounts due the claimant for temporary total disability benefits. A copy of the notice shall be sent to the claimant.

(h) In the event that an employer files a timely objection to any order of the Insurance Commissioner, private carrier or self-insured, whichever is applicable, with respect to compensability, or any order denying an application for modification with respect to temporary total disability benefits, or with respect to those expenses outlined in subsection (a), section three of this article, the division shall continue to pay to the claimant such benefits and expenses during the period of such disability. Where it is subsequently found by the Insurance Commissioner, private carrier or self-insured, whichever is applicable, that the claimant was not entitled to receive such temporary total disability benefits or
expenses, or any part thereof, so paid, the Insurance Commissioner, private carrier or self-insured, whichever is applicable, shall credit said employer's account with the amount of the overpayment. When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in that case determines that the claimant was not entitled to the benefits or expenses, the amount of benefits or expenses is considered overpaid. For all awards made or nonawarded partial benefits paid the Insurance Commissioner, private carriers or self-insured employer may recover the amount of overpaid benefits or expenses by withholding, in whole or in part, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(i) In the event that the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, finds that, based upon the employer's report of injury, the claim is not compensable, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall provide a copy of the employer's report to the claimant in addition to the order denying the claim.

(j) If a claimant is receiving benefits paid through a wage replacement plan, salary continuation plan or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for temporary total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the Insurance Commissioner, private carrier or self-insured of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall reduce the temporary total disability benefits provided under this
chapter by an amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the amount provided by the employer's plan or the temporary total disability benefit, whichever is greater: Provided, That this subsection does not apply to benefits being paid under the terms and conditions of a collective bargaining agreement.

§23-4-6b. Occupational hearing loss claims.

(a) In all claims for occupational hearing loss caused by either a single incident of trauma or by exposure to hazardous noise in the course of and resulting from employment, the degree of permanent partial disability, if any, shall be determined in accordance with the provisions of this section and awards made in accordance with the provisions of section six of this article.

(b) The percent of permanent partial disability for a monaural hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz shall be determined for the injured ear and the total shall be divided by four to ascertain the average decibel loss;

(2) The percent of monaural hearing impairment for the injured ear shall be calculated by multiplying by one and six-tenths percent the difference by which the aforementioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels; and

(3) The percent of monaural hearing impairment obtained shall be multiplied by twenty-two and one-half to ascertain the degree of permanent partial disability.
The percent of permanent partial disability for a binaural hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz is determined for each ear and the total for each ear shall be divided by four to ascertain the average decibel loss for each ear;

(2) The percent of hearing impairment for each ear is calculated by multiplying by one and six-tenths percent the difference by which the aforementioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels;

(3) The percent of binaural hearing impairment shall be calculated by multiplying the smaller percentage (better ear) by five, adding this figure to the larger percentage (poorer ear) and dividing the sum by six; and

(4) The percent of binaural hearing impairment obtained shall be multiplied by fifty-five to ascertain the degree of permanent partial disability.

(d) No permanent partial disability benefits shall be granted for tinnitus, psychogenic hearing loss, recruitment or hearing loss above three thousand hertz.

(e) An additional amount of permanent partial disability shall be granted for impairment of speech discrimination, if any, to determine the additional amount for binaural impairment, the percentage of speech discrimination in each ear shall be added together and the result divided by two to calculate the average percentage of speech discrimination, and the permanent partial disability shall be ascertained by
reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination obtained. To determine the additional amount for monaural impairment, the permanent partial disability shall be ascertained by reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination in the injured ear.

<table>
<thead>
<tr>
<th>% of Speech Discrimination</th>
<th>% of Permanent Partial Disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>90% and up to and including 100%</td>
<td>0%</td>
</tr>
<tr>
<td>80% and up to but not including 90%</td>
<td>1%</td>
</tr>
<tr>
<td>70% and up to but not including 80%</td>
<td>3%</td>
</tr>
<tr>
<td>60% and up to but not including 70%</td>
<td>4%</td>
</tr>
<tr>
<td>0% and up to but not including 60%</td>
<td>5%</td>
</tr>
</tbody>
</table>

(f) No temporary total disability benefits shall be granted for noise-induced hearing loss.

(g) An application for benefits alleging a noise-induced hearing loss shall set forth the name of the employer or employers and the time worked for each. The Insurance Commissioner may allocate to and divide any charges resulting from the claim among the employers with whom the claimant sustained exposure to hazardous noise for as much as sixty days during the period of three years immediately preceding the date of last exposure. The allocation is based upon the time of exposure with each employer. In determining the allocation, the Insurance Commissioner shall consider all the time of employment by each employer during which the claimant was exposed and not just the time within the three-year period under the same allocation as is applied in occupational pneumoconiosis cases.
(h) The employer against whom the claim is filed shall provide for prompt referral the claims for evaluation, for all medical reimbursement and for prompt authorization of hearing enhancement devices.

§23-4-8. Physical examination of claimant.

(a) The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may, after due notice to the claimant, whenever in its opinion it is necessary, order a claimant of compensation for a personal injury other than occupational pneumoconiosis to appear for examination before a medical examiner or examiners selected by the Insurance Commissioner, other private carrier or self-insured employer, whichever is applicable; and the claimant and employer each may select a physician of the claimant's or the employer's own choosing and at the claimant's or the employer's own expense to participate in the examination. All examinations shall be performed in accordance with the protocols and procedures established by rules of the Insurance Commissioner: Provided, That the physician may exceed these protocols when additional evaluation is medically necessary. The claimant and employer shall be furnished with a copy of the report of examination made by the medical examiner or examiners. The physicians selected by the claimant and employer have the right to submit a separate report to, or concur in any report made by the medical examiner or examiners selected by the Insurance Commissioner, private carrier or self-insured employer, and any separate report shall be considered in passing upon the claim.

(b) If the compensation claimed is for occupational pneumoconiosis, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may, after due notice to the employer, order a claimant to appear for examination before the Occupational Pneumoconiosis Board provided for in section eight-a of this article.
(c) Where the claimant is ordered to appear for an examination by the Occupational Pneumoconiosis Board pursuant to subsection (b) of this section or is required to undergo a medical examination or examinations, pursuant to subsection (a) of this section, the party that referred the claimant to the Occupational Pneumoconiosis Board or required the medical examination shall reimburse the claimant for loss of wages and reasonable traveling expenses as set forth in subsection (e) of this section and other expenses in connection with the examination or examinations.

(d) The claimant shall be reimbursed for reasonable traveling expenses as set forth in subsection (e) of this section incurred in connection with medical examinations, appointments and treatments, including appointments with the claimant’s authorized treating physician.

(e) The claimant’s traveling expenses include, at a minimum, reimbursement for meals, lodging and milage. Reimbursement for travel in a personal motor vehicle shall be at the milage reimbursement rates contained in the Department of Administration’s Purchasing Division Travel Rules as authorized by section eleven, article three, chapter twelve of this code in effect at the time the treatment is authorized.

§23-4-8c. Occupational Pneumoconiosis Board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

(a) The Occupational Pneumoconiosis Board, as soon as practicable, after it has completed its investigation, shall make its written report, to the Insurance Commissioner, private carrier or self-insured employer, whichever is
applicable, of its findings and conclusions on every medical question in controversy and the board shall send one copy of the report to the employee or claimant and one copy to the employer. The board shall also return to and file with the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, all the evidence as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his or her employment for a period of ten years during the fifteen years immediately preceding the date of his or her last exposure to such hazard and that the claimant or deceased employee has sustained a chronic respiratory disability, it shall be presumed that the claimant is suffering or the deceased employee was suffering at the time of his or her death from occupational pneumoconiosis which arose out of and in the course of his or her employment. This presumption is not conclusive.

(c) The findings and conclusions of the board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis and, if so, the percentage of permanent disability resulting therefrom;

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant's or deceased employee's occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis or other occupational disease; and
(3) What, if any, physician appeared before the board on behalf of the claimant or employer and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

(d) If either party objects to the whole or any part of the findings and conclusions of the board, the party shall file with the Office of Judges, within sixty days from receipt of the copy to that party, unless for good cause shown the chief administrative law judge extends the time, the party's objections to the findings and conclusions of the board in writing, specifying the particular statements of the board's findings and conclusions to which such party objects. The filing of an objection within the time specified is a condition of the right to litigate the findings and therefore jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the board, the commission or administrative law judge shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions stated in the report. If objection has been filed to the findings and conclusions of the board, notice of the objection shall be given to the board and the members of the board joining in the findings and conclusions shall appear at the time fixed by the Office of Judges for the hearing to submit to examination and cross-examination in respect to the findings and conclusions. At the hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational
pneumoconiosis, the claimant is barred for a period of three years from the date of the Occupational Pneumoconiosis Board's decision or until his or her employment with the employer who employed the claimant at the time designated as the claimant's last date of exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or pursuing a previously filed, but unruled upon, claim for occupational pneumoconiosis or requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be considered to be terminated if, for any reason, he or she has not worked for that employer for a period in excess of ninety days. Any previously filed, but unruled upon, claim shall be consolidated with the claim in which the board's decision is made and shall be denied together with the decided claim. The provisions of this subsection shall not be applied in any claim where doing so would, in and of itself, later cause a claimant's claim to be forever barred by the provisions of section fifteen of this article.

(f) Effective upon termination of the commission, the Insurance Commissioner shall assume all administrative powers and responsibilities necessary to administer sections eight-a, eight-b and eight-c of this article.

§23-4-8d. Occupational pneumoconiosis claims never closed for medical benefits.

Notwithstanding the provisions of subdivision (4), subsection (a), section sixteen of this article, a request for medical services, durable medical goods or other medical supplies in an occupational pneumoconiosis claim may be made at any time.

§23-4-15b. Determination of nonmedical questions; claims for occupational pneumoconiosis; hearing.
If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the last day of the last continuous period of sixty days' exposure to the hazards of occupational pneumoconiosis, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the State of West Virginia the claimant was exposed to such hazard 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 the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to the employee by a physician, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall determine whether the claimant filed his or her application within that period and whether in the State of West Virginia the claimant was exposed to the hazard over a continuous period of not less than two years during the ten years immediately preceding the date of last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by a dependent of a deceased employee, the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer.
within ten years prior to the filing of the claim, whether in the State of West Virginia the deceased employee was exposed to the hazard 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 the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall also determine other nonmedical facts that, in the opinion of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, are pertinent to a decision on the validity of the claim.

The Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall enter an order with respect to nonmedical findings within ninety days following receipt by the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, of both the claimant's application for occupational pneumoconiosis benefits and the physician's report filed in connection with the claimant's application and shall give each interested party notice in writing of these findings with respect to all the nonmedical facts. The findings and actions of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, are final unless the employer, employee, claimant or dependent, within sixty days after receipt of the notice, objects to the findings and, unless an objection is filed within the sixty-day period, the findings are forever final, the time limitation is a condition of the right to litigate the findings and therefore jurisdictional. Upon receipt of an objection, the chief administrative law judge shall set a hearing as provided in section nine, article five of this chapter. In the event of an objection to the findings by the employer, the claim shall, notwithstanding the fact that one or more hearings may be held with respect to the
Ch. 222] WORKERS’ COMPENSATION 1809

§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 subsection (c), section eight, article two-c of this chapter, and 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 any occupational
pneumoconiosis or occupational disease claim or any injury
claim in which temporary total benefits are being claimed,
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 July 1, 2008, in which a decision to deny benefits is protested and the matter involves an issue as to 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:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) 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, effective as of the original date of filing.

(d) 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.

(e) 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.
§23-5-3. Refusal to reopen claim; notice; objection.

If it appears to the Insurance Commissioner, private insurance carriers and self-insured employers, whichever is applicable, that an application filed under section two of this article fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within sixty days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the sixty-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the Office of Judges shall afford the claimant an evidentiary hearing as provided in section nine of this article.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

(a) No attorney's fee in excess of twenty percent of any award granted shall be charged or received by an attorney for a claimant or dependent. In no case shall the fee received by the attorney of such claimant or dependent be in excess of twenty percent of the benefits to be paid during a period of two hundred eight weeks. The interest on disability or dependent benefits as provided for in this chapter shall not be considered as part of the award in determining any such attorney's fee. However, any contract entered into in excess of twenty percent of the benefits to be paid during a period of
two hundred eight weeks, as herein provided, shall be
unlawful and unenforceable as contrary to the public policy
of this state and any fee charged or received by an attorney in
violation thereof shall be deemed an unlawful practice and
render the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not
to exceed twenty percent of the total value of the medical and
indemnity benefits: Provided, That this attorney’s fee, when
combined with any fees previously charged or received by
the attorney for permanent partial disability or permanent
total disability benefits may not exceed twenty percent of an
award of benefits to be paid during a period of two hundred
eight weeks.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-22. Authority of Insurance Commissioner regarding
employers in default to workers' compensation
funds; injunctions against defaulting employers.

(a) Upon termination of the Workers' Compensation
Commission, all of the powers and authority previously
conferred upon the Workers' Compensation Commission
pursuant to article two, chapter twenty-three of this code,
relating to employers in default to the Workers'
Compensation Fund, are hereby transferred to the Insurance
Commissioner and shall be applied by the commissioner to
those employers in default to the Old Fund or having liability
to the Uninsured Employer Fund or who are in policy default
or fail to maintain mandatory workers' compensation
coverage, all as defined in article two-c, chapter twenty-three
of this code.
(b) In any case in which an employer is in default to the Old Fund or has liability to the Uninsured Employer Fund or who is in default on a policy or otherwise fails to maintain mandatory workers' compensation coverage, all as defined in article two-c, chapter twenty-three of this code, the commission may bring an action in the circuit court of Kanawha County to enjoin the employer from continuing to operate the employer's business: Provided, That the commissioner may, in his or her sole discretion, and as an alternative to this action pursuant to this subsection, require the employer to file a bond, in the form prescribed by the commissioner, with satisfactory surety in an amount not less than one hundred fifty percent of the total payments, interest and penalties due.

(c) In any action instituted pursuant to subsection (b) of this section, the circuit court shall issue an injunction prohibiting the employer from operating the employer's business if the Insurance Commissioner proves by a preponderance of the evidence, that the employer is in default to the Old Fund or has liability to the uninsured fund or is in policy default or has otherwise failed to maintain mandatory workers' compensation coverage.

(d) Notwithstanding any provision of this code to the contrary, the commissioner shall have the authority to waive penalty and interest accrued on moneys due the Old Fund. The enactment of the provisions of this subsection shall be applied retrospectively to January 1, 2006, and may not be construed to require the commissioner to adjust or otherwise modify any agreements reached with regard to the payment of penalty or interest since that date.

(e) Notwithstanding any provision of this code to the contrary, the Insurance Commissioner may compromise and settle any claims for moneys due to the Old Fund or the
Uninsured Employer Fund. Information regarding settlements is subject to chapter twenty-nine-b of this code. The commissioner shall submit to the President of the Senate, the Speaker of the House of Delegates and the Legislative Auditor an annual report summarizing the settlements into which he or she has entered pursuant to this subsection. The summary shall describe the parties involved, the total amount owed and portions paid, and the terms of the settlement.

CHAPTER 223

(H.B. 2841 - By Delegates Talbott and Argento)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to extend the time for the city council of the City of Richwood, Nicholas County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for general repair of existing streets and alleys, acquisition of rights-of-way and construction of new streets, for services related to the protection against loss by fire, street maintenance, and for police protection for the city of Richwood and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of this additional levy from between the seventh and twenty-eighth days of March and the third Tuesday in April until May 31, 2009.

Be it enacted by the Legislature of West Virginia:
§1. Extending time for the city council for the City of Richwood to meet as a levying body for an election to supplement current funds for general repair of existing streets and alleys, acquisition of rights-of-way and construction of new streets, for services related to the protection against loss by fire, street maintenance, and for police protection for the City of Richwood and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of the additional levy.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the city council of the City of Richwood, Nicholas County, is authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Auditor and the State Tax Commissioner from between the seventh and twenty-eighth days of March and the third Tuesday in April until May 31, 2009, for the purpose of submitting to the voters of the City of Richwood the question of supplementing current funds for general repair of existing streets and alleys, acquisition of rights-of-way and construction of new streets, for services related to the protection against loss by fire, street maintenance and for police protection for the City of Richwood and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of this additional levy.
CHAPTER 224

(S.B. 490 - By Senators Caruth and Oliverio)

AN ACT to authorize and empower the county commission of Mercer County to appoint an emergency operations center board to oversee the operation of the enhanced emergency telephone system serving Mercer County.

Be it enacted by the Legislature of West Virginia:

EMERGENCY OPERATIONS CENTER BOARDS FOR MERCER COUNTY.

§1. Mercer County authorized to appoint an emergency operations center board.

1 The county commission of Mercer County is hereby authorized and empowered to appoint a board to be known as the Emergency Operations Center Board with power to oversee the operation of the enhanced emergency telephone system serving Mercer County.
AN ACT to amend and reenact §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60-3A-10d, all relating to the issuance of retail licenses for the sale of liquor; classifying retail licenses for the sale of liquor; setting forth legislative findings; defining certain terms; authorizing the Alcohol Beverage Control Commissioner to issue retail licenses for the sale of liquor; establishing certain standards for the issuance of licenses within market zones; limiting the issuance of retail licenses to operate mixed retail liquor outlets; authorizing the commissioner to adopt certain standards for retail outlets; authorizing the Retail Liquor Licensing Board to consider certain factors when authorizing additional retail outlets; increasing the maximum percentage of retail licenses a person may own; setting forth bidding procedures; setting license fees; adding citizenship and character requirements for license...
applicants; authorizing credit and background checks on license applicants; providing a purchase option for active retail licensees seeking to operate a freestanding liquor retail outlet; providing for financing for the purchase of a retail license for a freestanding liquor retail outlet; and authorizing legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60-3A-10d, all to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-2. Legislative findings and declarations; legislative purpose.
§60-3A-2a. Further legislative findings, declarations and purpose.
§60-3A-4. Definitions.
§60-3A-6. General powers and duties of board and commissioner.
§60-3A-7. Market zones; Class A and Class B retail licenses.
§60-3A-8. Retail license application requirements; retail licensee qualifications.
§60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2010; purchase options for bids beginning July 1, 2010; and licenses issued for each ten-year period thereafter.
§60-3A-10d. Financing option for retail licensees purchasing Class A retail licenses.
§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.

§60-3A-2. Legislative findings and declaration; legislative purpose.

(a) The Legislature hereby finds and declares that the sale of liquor at retail should no longer be by the state, but rather by retail licensees; that there is a need for the state to control the wholesale sales of liquor; that the health and welfare of the citizens of this state will be adequately protected by the licensing and control of such retail licensees; that the sale of liquor through retail licensees will satisfy reasonable consumer concerns of availability and price; and that the
operation and efficiency of state government will be improved by removing the state from the retail sale of liquor and permitting sales of liquor by retail licensees under licenses issued by the state together with strict enforcement of laws and rules relating to the sale of liquor.

(b) It is the purpose of the Legislature in providing for the retail sale of liquor to:

(1) Continue revenue to the state from the wholesale sale of liquor by requiring all retail licensees to purchase all liquor (other than wine) from the commissioner and by further requiring all private clubs licensed under the provisions of article seven of this chapter to purchase all liquor (other than wine) from retail licensees;

(2) Provide a system of controls, through limitations on the numbers of retail outlets and application of the police power of the state, to discourage the intemperate use of liquor;

(3) Preserve and continue the tax base of counties and municipalities derived from the retail sale of liquor;

(4) Obtain revenue for the state from the issuance of retail licenses;

(5) Facilitate the responsible marketing and growth of existing retail outlets; and

(6) Encourage the sale of liquor in freestanding liquor retail outlets that offer a wide variety of liquor at competitive prices.

§60-3A-2a. Further legislative findings, declarations and purpose.
(a) In addition to the findings and declarations set forth in subsection (a), section two of this article, the Legislature hereby finds and declares that:

1. The provisions of this article as enacted during the regular session of the Legislature in 1990 were intended to require that all licenses issued for the retail sale of liquor expire as of July 1, 2000, and that the issuance of retail licenses for the ten-year period beginning July 1, 2000, and for each ten-year period thereafter, be based on sealed competitive bids except as provided in section ten-b of this article;

2. It is the intention of the Legislature to provide that all retail licenses issued beginning July 1, 2000, expire ten years from the date of issuance and that every ten years the issuance of retail licenses be based on competitive bids, except as provided in section ten-b of this article;

3. The purposes set forth in subsection (b), section two of this article remain the purposes of the Legislature;

4. Many of those persons who currently hold retail licenses have not only provided the services to the public contemplated by this article, but in many instances have provided employment, invested significant time and money into their businesses and otherwise made substantial contributions to the economic and civic development of the communities in which they conduct business, and therefore, current retail licensees should be afforded special consideration if their bids for the licenses issued for the ten-year period beginning July 1, 2000, and July 1 every ten years thereafter, be unsuccessful;

5. Those persons who are issued a retail license for the ten-year period beginning on July 1, 2000, and for any ten-year period thereafter should also be afforded special
consideration if they operate or seek to operate a freestanding liquor retail outlet or if their bids for a retail license are unsuccessful; and

(6) Further statutory changes are desirable to effect the purposes set forth in subsection (b), section two of this article.

(b) It is, therefore, the further purposes of the Legislature in providing for the retail sale of liquor to:

(1) Require that all licenses issued for the ten-year period beginning July 1, 2000, and for each ten-year period thereafter be based on sealed competitive bids except as provided in section ten-b of this article;

(2) Provide active retail licensees who operate or seek to operate a freestanding liquor retail outlet the opportunity to pay a purchase option for a Class A retail license or licenses for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter;

(3) Provide current retail licensees who, having bid in a manner consistent with the provisions of this article, fail to submit the highest bid for licenses issued for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter an additional opportunity to obtain the license; and

(4) Effect statutory changes to further the purposes provided in this section and section two of this article.

§60-3A-4. Definitions.

(a) “Active retail license” means a current license for a retail outlet that has been open and in continuous operation for a period of not less than twelve months prior to July 1, 2010, or July 1 every ten years thereafter.
(b) “Active retail licensee” means a person who holds an active retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person’s successor or any person who holds an active retail license when it expires at the end of a ten-year period.

(c) “Applicant” means any person who elects to pay a purchase option for a Class A retail license, who bids for a retail license or who seeks the commissioner’s approval to purchase or otherwise acquire a retail license from a retail licensee, in accordance with the provisions of this article.

(d) “Application” means the form prescribed by the commissioner which must be filed with the commissioner by any person bidding for a retail license.

(e) “Board” means the Retail Liquor Licensing Board created by this article.

(f) “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet.

(g) “Class B retail license” means a retail license permitting the sale of liquor at a mixed retail liquor outlet.

(h) “Current retail licensee” means a person who holds a retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person’s successor or any person who holds a retail license when it expires at the end of a ten-year period.

(i) “Designated areas” means one or more geographic areas within a market zone designated as such by the board.

(j) “Executive officer” means the president or other principal officer, partner or member of an applicant or retail
licensee, any vice president or other principal officer, partner
or member of an applicant or retail licensee in charge of a
principal business unit or division, or any other officer,
partner or member of an applicant or retail licensee who
performs a policy-making function.

(k) “Freestanding liquor retail outlet” means a retail
outlet that sells only liquor, beer, nonintoxicating beer and
other alcohol-related products, including tobacco-related
products.

(l) “Liquor” means alcoholic liquor as defined in section
two, article one of this chapter and also includes both wine
and fortified wines as those terms are defined in section two,
article eight of this chapter.

(m) “Market zone” means a geographic area designated
as such by the board for the purpose of issuing retail licenses.

(n) “Mixed retail liquor outlet” means a retail outlet that
sells liquor, beer, nonintoxicating beer and other alcohol-
related products, including tobacco-related products, in
addition to convenience and other retail products.

(o) “Person” means an individual, firm, corporation,
association, partnership, limited partnership, limited liability
company or other entity, regardless of its form, structure or
nature.

(p) “Retail license” means a license issued under the
provisions of this article permitting the sale of liquor at retail.

(q) “Retail licensee” means the holder of a retail license.

(r) “Retail outlet” means a specific location where liquor
may be lawfully sold by a retail licensee under the provisions
of this article.
§60-3A-6. General powers and duties of board and commissioner.

(a) The board shall create, based on economic and demographic factors, market zones within the state for the issuance of Class A and Class B retail licenses.

(b) The commissioner shall:

1. Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and timetable for investigating, processing and approving applications;

2. Develop a form of retail license to be issued to each retail licensee under the provisions of this article;

3. Disseminate to the public information relating to the issuance of retail licenses;

4. Promulgate standards for advertising the sale, availability, price and selection of liquor;

5. Set minimum standards for retail outlets regarding the amount and variety of liquor a licensee must offer for sale at each retail outlet; the size, space and design of each retail outlet; the amount of inventory and displayed inventory of liquor in each retail outlet; order quantities sufficient to qualify for delivery to each retail outlet; phone, computer and Internet requirements for each retail outlet; the verification of liquor orders; liquor delivery dates and routes for each retail outlet; and such other requirements the commissioner deems necessary;

6. Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class A retail license which shall include, without limitation, the requirement that a minimum square footage of displayed inventory available
for retail purchase at the retail outlet be composed of liquor, beer and nonintoxicating beer products and that liquor, beer and nonintoxicating beer products available for sale are placed for sale throughout the entire retail area of the retail outlet including the retail floor space and shelving;

(7) Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class B retail license which shall include, without limitation, the requirements that a minimum square footage of the displayed inventory available for purchase at the retail outlet be composed of liquor products; that liquor available for sale in the retail outlet is placed only in an area of the retail outlet that prominently displays signage identifying the area as a restricted liquor area and stating that no one under the age of twenty-one may purchase liquor; and that the area is separate from and not highly visible to persons outside of the restricted liquor area.

(8) Enforce the provisions of this article;

(9) Impose civil penalties upon retail licensees;

(10) Enter the retail outlet of any retail licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of such retail licensee with the provisions of this article and any rules promulgated by the board or the commissioner pursuant to the provisions of this article; and

(11) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty-six or section twenty-eight of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if such section was set forth in extenso herein.
(c) The board and the commissioner shall each:

(1) Engage accounting, legal and other necessary professional consultants to assist them in carrying out their respective duties under this article;

(2) Adopt, promulgate, amend or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of this article, as they may deem necessary or desirable for the public interest in carrying out the provisions of this article. Such rules shall be adopted, amended and repealed in accordance with the provisions of chapter twenty-nine-a of this code; and

(3) Notwithstanding any other provision of this code to the contrary, proposed legislative rules for this article filed in the State Register by September 1, 2009, may be filed as emergency rules. Such emergency rules shall include the standards, criteria and formulae or methodology utilized by the board when establishing the minimum bid for each license pursuant to section ten-b of this article.

§60-3A-7. Market zones; Class A and Class B retail licenses.

(a) The market zones established by the board for the retail sale of liquor within this state under the enactment of this section in 1990 may not be modified by the board unless authorized by the Legislature. For each market zone established by the board, the commissioner may issue one or more Class A retail licenses and one or more Class B retail licenses within the market zone: Provided, That the number of Class B retail licenses to be issued by the commissioner within a market zone shall not exceed one hundred fifty percent of the number of Class A retail outlets authorized for that market zone, except as otherwise authorized by subsection (d) of this section or section twenty-seven-a of this article: Provided, however, That, except as authorized by subsection (d) of this section or section twenty-seven-a of
this article, in a market zone where the number of Class A retail licenses issued by the commissioner is an odd number, the number of Class B retail licenses which may be issued in that market zone shall be rounded up to the next highest whole number following that number which is equal to one hundred fifty percent of the number of Class A retail licenses issued by the commissioner: Provided that, for the ten-year period beginning July 1, 2010, the number of Class B retail licenses which are available for bid in a market zone shall not be less than the number of mixed retail outlets located in that market zone as of October 31, 2009.

(b) When authorizing Class B retail licenses for a market zone, the board may create one or more designated areas within the market zone and authorize one Class B retail license for each designated area. For each market zone, the commissioner may issue additional Class B retail licenses for retail outlets to be located outside any designated area, but the number of additional Class B retail licenses, when added to the total number of Class B retail licenses issued for all designated areas within the market zone, shall not exceed the maximum number of Class B retail licenses permitted under subsection (a) of this section for that market zone, except as authorized by subsection (d) of this section or section twenty-seven-a of this article.

(c) A person may hold one or more Class A retail licenses and one or more Class B retail licenses in a market zone or zones.

(d) Notwithstanding any provision of subsection (a) or (b) of this section, no later than thirty days prior to the receipt of the bids described in section ten-b of this article, the board may authorize the commissioner to issue additional Class B retail licenses in a market zone for the ten-year period which begins next following July 1, where the board determines that:
(1) Each retail outlet authorized to operate in the market zone has been open and in operation for not less than one year;

(2) Economic and demographic factors clearly demonstrate the need for an additional retail outlet or outlets within the market zone to meet consumer demand; and

(3) The issuance of an additional Class B license in the market zone will not significantly impair the efforts to procure the revenues described in subsection (b), section ten-b of this article.

(e) The board shall establish the minimum bid for any additional Class B retail licenses authorized under subsection (d) of this section.

(f) No person may hold a combination of Class A or Class B retail licenses that, in the aggregate, authorizes the operation of more than thirty percent of the total number of retail outlets authorized under the provisions of this article to operate in this state.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option for a Class A retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence
addresses of each executive officer and other principal
officer, partner or member of the entity; a copy of the entity’s
charter or other agreement under which the entity operates;
and the names and residence addresses of any person owning,
directly or indirectly, at least twenty percent of the
outstanding stock, partnership or other interests in the
applicant;

(3) That the applicant has never been convicted in this
state or any other state of any felony or other crime involving
moral turpitude or convicted of any felony in this or any
other state court or any federal court for a violation of any
state or federal liquor law, and if the applicant is other than
an individual, that none of its executive officers, other
principal officers, partners or members, or any person
owning, directly or indirectly, at least twenty percent of the
outstanding stock, partnership or other interests in the
applicant, has been convicted; and

(4) That the applicant is a United States citizen of good
moral character and, if a naturalized citizen, when and where
naturalized; and, if a corporation organized and authorized to
do business under the laws of this state, when and where
incorporated, with the name and address of each officer; that
each officer is a citizen of the United States and a person of
good moral character; and if a firm, association, partnership
or limited partnership, that each member is a citizen of the
United States and, if a naturalized citizen, when and where
naturalized, each of whom must sign the application.

(b) An applicant shall provide the commissioner any
additional information requested by the commissioner
including, but not limited to, authorization to conduct a
criminal background and credit records check.

(c) Whenever a change occurs in any information
provided to the commissioner, the change shall immediately
be reported to the commissioner in the same manner as
originally provided.
(d) The commissioner shall disqualify each bid submitted by an applicant under section ten of this article and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law; or

(2) Any executive officer or other principal officer, partner or member of the applicant, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.


(a) Except as provided in section ten-b of this article, bids for licenses shall be governed by the provisions of this section.

(b) The issuance of retail licenses shall be based on sealed competitive bids in accordance with the provisions of this section. Bids for the issuance of retail licenses shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be each market zone within which a retail outlet shall be located. The second publication of the notice shall appear more than thirty days next preceding the final day for submitting bids.
(c) Each bid shall indicate the market zone for which the retail license is sought, whether the bid is for a Class A retail license or Class B retail license, and, if the board has created one or more designated areas for the market zone, whether the bid is for a Class A or Class B retail license to be issued for any designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of the bids. Subject to the provisions of section ten-b of this article, each retail license shall be awarded to the highest bidder. No bid shall be considered unless the bond required under section eleven of this article is submitted to the commissioner. All bids for a retail license may be rejected by the board if the board determines that the highest bid is inadequate, in which event the commissioner shall begin anew the bidding process for that retail license.

(d) Each person desiring to submit a bid shall file the bid with the commissioner prior to the specified date and hour for the bid openings. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour constitutes sufficient reason for the rejection of a bid. After the award of the retail license, the commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder’s application shall be maintained as a public record, shall be open to public inspection in the commissioner’s office and shall not be destroyed without the written consent of the Legislative Auditor.

(e) Prior to the issuance of the retail license to the successful bidder, the bid price and the annual retail license fee, as specified in section twelve of this article, shall be paid to the commissioner by money order, certified check or cashier’s check. All retail licenses shall be signed by the commissioner in the name of the state.

(f) If the successful bidder fails to pay to the commissioner the bid price and the annual retail license fee,
at the time specified by the commissioner, the bond provided in section eleven of this article shall be forfeited and the bidder shall not be issued the retail license. The commissioner shall then issue the retail license to the next highest bidder for the retail license or reject all bids and start anew the bidding procedure for the retail license.

§60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2010; purchase options for bids beginning July 1, 2010; and licenses issued for each ten-year period thereafter.

(a) The issuance of retail licenses for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter, shall be based upon sealed competitive bid in accordance with the provisions of section ten of this article except as provided in this section.

(b) Prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, the board shall determine the minimum bid for each license based upon a review of inflation data, demographic data, the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the Governor’s official revenue estimates for fiscal year 2009-2010 as presented to the regular session of the Legislature in 2009.

(c) Prior to accepting bids for retail licenses to be issued for the ten-year periods beginning July 1, 2010, and July 1 every ten years thereafter, the board shall determine the minimum bid for each retail license based upon a review of the sales at each retail outlet permitted to operate under the retail license and such other factors as the board may determine to generate the revenues from retail license
renewal projected by the Governor’s official revenue estimates for the fiscal year preceding the expiration of the retail licenses.

(d)(1) Notwithstanding any provision of this article to the contrary, prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and every ten-year period thereafter, each active retail licensee operating or seeking to operate a freestanding liquor retail outlet shall be eligible to purchase a Class A retail license or licenses as provided in this subsection.

(2) At least sixty days prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, the board shall provide notice to each eligible retail licensee of his or her option to purchase a Class A retail license or licenses as provided in this subsection. The board shall include with this notice an explanation of the financing option provided in section ten-d of this article and a financing application form prepared by the commissioner.

(3) An eligible retail licensee may elect to pay a purchase option or options for each retail outlet operating under an active retail license currently held by the licensee. A retail licensee may only exercise a purchase option for the lesser of four Class A retail licenses or the number of active retail licenses currently held by the licensee.

(4) Each eligible retail licensee who elects to pay a purchase option shall, within thirty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, pay to the commissioner an amount equal to ten percent over and above the minimum bid as determined by the board for each Class A retail license the retail licensee wishes to purchase or, if the retail licensee elects to take the financing option provided in section ten-d of this article, a down payment, the amount
of which shall be calculated in accordance with the provisions of that section. A retail licensee shall be awarded a Class A retail license or licenses upon the commissioner's receipt of his or her payment or down payment: Provided, That the commissioner determines that the retail licensee is in good standing with the state and meets all other requirements imposed by the provisions of this article for the issuance of a Class A retail license.

(5) A Class A retail license purchased in accordance with this subsection shall be issued for the ten-year period beginning July 1, 2010, or July 1 every ten years thereafter, and shall expire on June 30, 2020, or on June 30 every ten years thereafter.

(6) Nothing in this subsection may be interpreted as affecting the ability of a retail licensee to bid for a retail license or licenses as otherwise provided in this article: Provided, That the retail licensee meets all other requirements imposed by the provisions of this article for the submission of bids.

(e) All bids for a retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter may be rejected by the board if the board determines that the highest bid fails to meet the minimum bid. The board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone. Where the board determines the highest bid meets or exceeds the minimum bid, the board shall determine whether, at the time of the bid, the same retail license was held for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the license. If the current retail licensee holding the same retail license at the time of submission of the bid for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the retail license, submitted a bid
that was not less than the minimum bid and is, after
considering any preference applicable under the provisions
of section ten-a of this article, an unsuccessful bidder for the
retail license for the period beginning July 1, 2010, or for any
ten-year period thereafter, on July 1 when the retail license
expires, the commissioner shall notify the person that upon
paying the amount of the highest bid, subject to the
provisions of subsection (f) of this section, and upon
compliance with all other requirements imposed by the
provisions of this article for the issuance of the license, the
retail license for the ten-year period beginning July 1, 2010,
or for any ten-year period thereafter, shall be issued to the
current retail licensee. If, within the time determined by the
commissioner, the current retail licensee pays the amount to
the commissioner and complies with all other requirements
imposed by the provisions of this article for the issuance of
the retail license, the retail license for the ten-year period
beginning July 1, 2010, or for any ten-year period thereafter,
shall be issued to the current retail licensee.

(f) The board shall, in determining the amount a current
retail licensee who is an unsuccessful bidder shall pay as
described in subsection (e) of this section, afford the
unsuccessful bidder a preference. If the unsuccessful bidder
is a West Virginia resident as defined in section ten-a of this
article, the board shall afford the unsuccessful bidder a five
percent preference in addition to the five percent preference
afforded under section ten-a of this article. If the
unsuccessful bidder is not a West Virginia resident, the board
shall afford the unsuccessful bidder a five percent preference.
The preference shall be computed by subtracting the
preference percentage of the highest bid price from the
highest bid price: Provided, That under no circumstances
may the preference bring the price of the bid below the
minimum bid established by the board: Provided, however,
That a current retail licensee who is not operating any of the
retail outlets for which he or she is authorized under the
license is not eligible for the preference provided for under this section.

(g) In the event all bids submitted for a retail license fail to meet the minimum bid amount for the license as determined by the board, the board may offer the license for bid again after it determines a new minimum bid amount for the retail license.

§60-3A-10d. Financing option for retail licensees purchasing Class A retail licenses.

(a) The commissioner shall offer financing to each retail licensee who elects to pay the purchase option for a Class A retail license or licenses as provided in section ten-b of this article: Provided, That the retail licensee is approved by the commissioner for financing and otherwise complies with the requirements of this section: Provided, however, That the retail licensee agrees to enter a financing agreement with the commissioner as provided in subsection (d) of this section.

(b) The commissioner shall prepare an application form for retail licensees who desire to elect the financing option provided in this section. The commissioner shall make the form available to retail licensees in paper or electronic format at least sixty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter. At a minimum, the application form shall require the following information:

(1) Certification that the applicant elects to pay the purchase option for a Class A retail license or licenses as provided in section ten-b of this article;

(2) Certification that the applicant is the current holder and operator of an active retail license issued by the board;
(3) A description of the retail license or licenses currently held by the applicant;

(4) Any information the commissioner requires to evaluate the creditworthiness of the applicant, including without limitation the applicant’s authorization to perform a criminal background and credit check; and

(5) Any additional information the commissioner requires to effectuate the purposes of this section.

(c) For an applicant to be considered for financing, the application required under subsection (b) of this section must be submitted to the commissioner with a down payment of fifty percent of the total amount due under the financing agreement provided in subsection (d) of this section no later than May 1, 2010, or, for subsequent retail license periods, May 1 every ten years thereafter. The commissioner shall make a determination as to the eligibility of an applicant for financing and the issuance of a Class A retail license within fifteen days of his or her receipt of the application. If the commissioner determines that an applicant is ineligible for financing, is not in good standing with the state or does not otherwise meet the requirements of this article for the issuance of a Class A retail license, the commissioner shall notify the applicant that his or her application for financing is denied and shall refund in full any moneys paid to the commissioner as a down payment. If the applicant's application for financing is denied for any reason other than the fact that the applicant is not in good standing with the state or is not otherwise eligible for the issuance of a Class A retail license, the commissioner shall provide the applicant the option of paying the full amount of a purchase option for a Class A retail license or licenses as provided in subsection (d), section ten-b of this article. At the request of the applicant, the commissioner may credit any moneys received
as a down payment towards payment of the full amount of a purchase option for a Class A retail license or licenses.

(d) The commissioner is hereby authorized to enter into a financing agreement with each retail licensee meeting the requirements of this section. The financing agreement shall contain such terms and conditions as prescribed by the commissioner, but at a minimum shall contain the following:

(1) The total amount due, including the required down payment, which shall equal ten percent over and above the minimum bid as determined by the board for each Class A retail license the retail licensee wishes to purchase;

(2) The interest to be charged on the total amount due at a rate of the adjusted prime lending rate minus one hundred basis points. The interest rate shall be set on the date the financing is approved by the commissioner;

(3) The total amount due, not including the required down payment, to be payable to the commissioner in monthly or quarterly installments over a period of sixty months. If a retail licensee elects to pay in monthly installments, his or her first payment is due on August 1 and successive payments are due on the first day of each month thereafter until the debt is retired. If a retail licensee elects to pay in quarterly installments, his or her first payment is due on October 1 and successive payments are due on the first day of every third month thereafter until the debt is retired;

(4) The failure of a retail licensee to make a payment in accordance with the terms of the financing agreement shall result in the entire balance of the amount due becoming immediately due and payable to the commissioner and shall result in the forfeiture of the down payment and any moneys paid to the commissioner in accordance with this section; and
The failure of a retail licensee to make a payment in accordance with the terms of the financing agreement within thirty days of the day on which the payment was due shall result in the immediate revocation of the Class A retail license held by the licensee and the commissioner shall reissue the license by sealed competitive bid in accordance with section ten of this article. A retail licensee whose retail license is revoked for failure to make payments as provided in the financing agreement is deemed an unsuitable retail licensee and shall be permanently prohibited from bidding on a retail license under this article.


Each applicant submitting a bid under section ten of this article or electing to pay a purchase option for a Class A license or licenses as provided in section ten-b of this article shall furnish to the commissioner a bond at the time of bidding, which bond shall guarantee the payment of twenty-five percent of the price bid or paid for the retail license. The bond required by this section shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the state or an irrevocable letter of credit issued by a financial institution acceptable to the commissioner. If furnished in cash or negotiable securities, the principal shall be deposited without restriction in the State Treasurer’s office and credited to the commissioner, but any income shall inure to the benefit of the applicant. For applicants bidding on a retail license, the bond shall be returned to an applicant following the bidding if such applicant is not the successful bidder for the retail license, and, if an applicant is the successful bidder, the bond shall be released after issuance of the retail license.

§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.
(a) The annual retail license period is from July 1 to June 30 of the following year. The annual retail license fee for a Class A or Class B retail license is $2,000. The annual retail license fee for the initial year of issuance shall be prorated based on the number of days remaining between the date of issuance and the following June 30.

(b) All retail licenses expire on June 30 of each year and may be renewed only upon the submission to the commissioner of the same information required for the issuance of the license and any additional information requested by the commissioner on the forms and by the date prescribed by the commissioner, together with the payment to the commissioner of the applicable annual retail license fee required under this section.

(c) No person may sell liquor at any retail outlet if the retail license applicable to the outlet has been suspended or revoked, or has expired.

(d) All retail licenses issued or renewed under the provisions of this article for the period ending June 30, 2010, or on June 30 for any ten-year period thereafter, expire and are of no further force or effect as of July 1, 2010, or as of July 1 every ten years thereafter.

(e) Notwithstanding any provision of section eighteen, article four of this chapter to the contrary, a municipality may invoke the authority granted by section four, article thirteen, chapter eight of this code to require an annual license from each retail licensee and require payment for the license in amounts not to exceed the amounts provided in subsection (a) of this section.
AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2009, in the amount of $26,500,000 from the Revenue Shortfall Reserve Fund, fund 7005, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the unappropriated surplus balance for the fiscal year ending June 30, 2009, to the Governor’s office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims throughout the state will fall short of that needed during the fiscal year ending June 30, 2009; and

WHEREAS, The Revenue Shortfall Reserve Fund has a sufficient balance available for appropriation in the fiscal year ending June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the Revenue Shortfall Reserve Fund, fund 7005, organization 0701, be decreased by expiring the amount of $26,500,000 to the unappropriated surplus balance of the
State Fund, General Revenue, and that the total appropriation for fiscal year ending June 30, 2009, to fund 0105, fiscal year 2009, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

EXECUTIVE

4 7—Governor’s Office—
5 Civil Contingent Fund

6 (WV Code Chapter 5)

7 Fund 0105 FY 2009 Org 0100

8 General
9 Revenue
10 Activity Fund

11 1a May 2009 Flood Recovery-
12 Surplus ................ . . . $26,500,000

13 The above appropriation for May 2009 Flood Recovery-
14 Surplus (activity ), is to be used exclusively for recovery
15 efforts necessitated by May 2009 flooding. Any federal
16 reimbursements received to remunerate disbursements from
17 this activity or funds transferred from this activity shall be
18 credited back to this activity.

19 The purpose of this bill is to expire the sum of
20 $26,500,000 from the Revenue Shortfall Reserve Fund, fund
21 7005, organization 0701, and to supplement the Governor’s
22 office - Civil Contingent Fund, fund 0105, fiscal year 2009,
23 organization 0100, in the budget act for the fiscal year ending
24 June 30, 2009, for expenditure during the fiscal year 2009.
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 2422, fiscal year 2009, organization 0221, by supplementing and amending chapter 10, Acts of the Legislature, regular session, 2008, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 2009, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenue for fiscal year 2009, less regular appropriations for the fiscal year 2009; 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 June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 10, Acts of the Legislature, regular session, 2008, known as the Budget Bill, be supplemented and amended by adding to Title II, section 5 thereof, the following:
TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

266a-Public Defender Services Fund 2422 FY 2009 Org 0221

1  Appointed Counsel Fees (R) .... 788 $21,000,000

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees (fund 2422, activity 788) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending June 30, 2009, by providing for a new item of appropriation to be established therein to appropriate funds to the designated spending unit for expenditure during the fiscal year 2009.

CHAPTER 4

(S.B. 1009 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 2, 2009; in effect ninety days from passage.]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12i; and to
amend said code by adding thereto a new article, designated §44-16-1, §44-16-2, §44-16-3, §44-16-4, §44-16-5 and §44-16-6, all relating to the future support of children with autism; creating a personal income tax modification to adjusted gross income for parents and guardians contributing to a qualified trust fund; providing for limitations on amount of modification earned and taken; specifying modification carryforward and treatment of modification carryforward; specifying personal income tax treatment of deposits, earnings and withdrawals of trust funds; specifying effective date for tax modification; providing rule-making authority for use and administration of qualified trust funds and requirements for claiming the tax modification; specifying tax assessment for modification improperly taken; addressing statute of limitations; defining terms; specifying criteria for creating a qualified trust for a child with autism; establishing eligibility criteria; providing for creation of trust accounts for a child with autism; creating the West Virginia Children with Autism Trust Board; requiring board certification of certain information; setting forth membership of the board; setting forth duties and responsibilities of the board; granting rule-making authority to the board; providing for reimbursement of board members’ expenses; exempting identities of trust fund beneficiaries, account owners or donors from chapter twenty-nine-b of said code; 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 section, designated §11-21-12i; and to amend said code by adding thereto a new article, designated §44-16-1, §44-16-2, §44-16-3, §44-16-4, §44-16-5 and §44-16-6, all to read as follows:

Chapter 11. Taxation
44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.
ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12i. Decreasing modification reducing federal adjusted gross income for qualifying contribution to a qualified trust maintained for the benefit of a child with autism; effective date.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to section twelve of this article, a modification reducing federal adjusted gross income is hereby authorized in the amount of any qualifying contribution to a qualified trust maintained for the benefit of a child with autism by the parent or guardian of a child with autism, up to a maximum of $1,000 per year for individual filers and persons who are married but filing separately, and $2,000 per year for persons who are married and filing jointly, 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. This modification is available regardless of the type of return form filed. The taxpayer may elect to carry forward the modification over a period not to exceed four tax years, beginning in the tax year in which the payment was made: Provided, That the amount of the decreasing modification, in combination with all other decreasing modifications authorized pursuant to this article, shall in no event reduce taxable income below zero. Any unused decreasing modification carryforward amount remaining after the four-year carryforward period is forfeited. The accrued deposits and earnings on the qualified trust account for a child with autism and the subsequent withdrawal of funds from that trust account, made in accordance with the provisions of article sixteen, chapter forty-four of this code, shall not be treated as taxable income to either the trust or the beneficiary. The provisions of this section are effective for taxable years beginning on and after January 1, 2011.

(b) The following definitions apply to this section:
(1) “Autism” means “autism” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(2) “Child with autism” means “child with autism” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(3) “Guardian” means “guardian” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(4) “Parent” means a “parent” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(5) “Qualified trust for a child with autism” means “qualified trust for a child with autism” as that term is defined in section one, article sixteen, chapter forty-four of this code.

c) If it appears upon audit or otherwise that any person or entity has taken the decreasing modification allowed under this section and was not entitled to take the decreasing modification, or has withdrawn funds from the qualified trust for a child with autism in a way not consistent with the requirements of article sixteen, chapter forty-four of this code, then an assessment shall be made and the income tax liability of the taxpayer shall be recomputed disallowing the decreasing modification so taken. Such assessment shall not be barred by any statute of limitations otherwise applicable to the tax imposed pursuant to this article. Amended returns shall be filed for any tax year for which the decreasing modification 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.
(d) Married parents who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section in an amount equal to the amount of contributions made by the parents into the trusts, not to exceed $1,000 each.

(e) Joint guardians who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section, in an amount equal to the amount of contributions made by the guardians into the trust, not to exceed $1,000 each.

(f) In the event the parents or guardians of a child with autism, claiming the modification provided under this section, become divorced or legally separated, each party shall be allowed to claim the amount of unused carryforward modification that remains available under this section according to the terms of an agreed property settlement approved by the divorce court which specifically addresses the unused carryforward modification. In the event that no property settlement specifically addressing the unused carryforward modification exists relating to the divorce or legal separation, then any unused carryforward modification remaining at the time of the divorce or legal separation is granted shall be evenly divided between the parties.

(g) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section, all in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.
ARTICLE 16. TRUSTS FOR CHILDREN WITH AUTISM.

§44-16-1. Definitions.
§44-16-2. Creation of a qualified trust for a child with autism.
§44-16-3. West Virginia Children with Autism Trust Board; creation and composition of the trustee board; duties and responsibilities; reimbursement of expenses.
§44-16-4. Reports and account.
§44-16-5. Confidentiality.
§44-16-6. Effective date.

§44-16-1. Definitions.

For purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

(a) “Autism” means a complex developmental disability and spectrum disorder, whose diagnosis must be clinically confirmed by qualified physicians and psychiatrists after extensive examination and testing, defined by a certain set of behaviors and symptoms which affects a person’s ability to communicate and interact with others.

(b) “Board” means the West Virginia Children with Autism Trust Board created in section three of this article.

(c) “Child with autism” means a child, under the age of eighteen, who has been clinically diagnosed as having autism to a degree to which it results in a moderate or severe impairment in two or more areas of daily living, as the terms “moderate impairment”, “severe impairment” and “daily living” are defined under Title II or Title XVI of the Social Security Disability Act, or a child who has been clinically diagnosed with autism and has been determined to be disabled under either Title II or Title XVI of the Social Security Disability Act for any reason.

(d) “Guardian” means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age,
autism

26 understanding or self-control is considered incapable of
27 administering his or her own affairs.

28 (e) “Parent” means a person who is another person’s
29 natural or adoptive mother or father or who has been granted
30 parental rights by valid court order and whose parental rights
31 have not been terminated by a court of law.

32 (f) “Qualified trust for a child with autism” means a trust
33 account for a child with autism that: (1) Is established at a
34 national bank, a state bank of a state of the United States or
35 a trust company that at all times is no less than adequately
36 capitalized as determined by standards adopted by United
37 States banking regulators and that is either regulated by state
38 banking laws of a state of the United States or is a member of
39 the Federal Reserve System; and (2) has been approved by
40 the West Virginia Children with Autism Trust Board in
41 accordance with this article.

42 (g) "Qualified trustee" means any person authorized by
43 the laws of this state or of the United States to act as a trustee
44 who has been approved by the board to serve as the trustee of
45 a qualified trust for a child with autism.

46 (h) "Tax Commissioner" means the same as that term is
47 used in section one, article one, chapter eleven of this code.

§44-16-2. Creation of a qualified trust for a child with autism.

1 (a) Any parent or guardian of a child with autism may
2 establish a qualified trust for a child with autism. No account
3 shall qualify as a qualified trust for a child with autism until
4 it has been approved as such by the West Virginia Children
5 with Autism Trust Board established in section three of this
6 article. The board shall certify the establishment of each
7 qualified trust to the Tax Commissioner.

8 (b) To qualify for the tax deduction established in section
9 twelve-i, article twenty-one, chapter eleven of this code, the
parent or guardian seeking the tax deduction shall provide to
the Tax Commissioner certification that the qualified trust
has been authorized by the board and any other
documentation required by the Tax Commissioner.

(c) The following types of expenses incurred to support
the designated beneficiary after the named beneficiary has
reached the age of eighteen or after the death of the parent or
guardian who established the trust account shall be allowable
if made for the benefit of the beneficiary of the trust.

(1) *Education.* -- Expenses for education, including
tuition for preschool through post-secondary education,
books, supplies and educational materials related to such
education, tutors and special education services.

(2) *Housing.* -- Expenses for housing maintained for the
beneficiary, separate and apart from the housing used by the
parent or guardian who established the trust account while
the parent or guardian is still alive, including rent, mortgage
payments, home improvements and modifications,
maintenance and repairs, real property taxes and utility
charges.

(3) *Transportation.* -- Expenses for transportation,
including the use of mass transit, the purchase or
modification of vehicles and moving expenses.

(4) *Employment support.* -- Expenses related to obtaining
and maintaining employment, including job-related training,
assistive technology and personal assistance supports.

(5) *Health, prevention and wellness.* -- Expenses for the
health and wellness, including premiums for health
insurance, medical, vision and dental expenses, habilitation
and rehabilitation services, durable medical equipment,
therapy, respite care, long-term services and supports, and
nutritional management.
(6) Life necessities. -- Expenses for life necessities, including clothing, activities which are religious, cultural or recreational, supplies and equipment for personal care, community-based supports, communication services and devices, adaptive equipment, assistive technology, personal assistance supports, financial management and administrative services, life and health insurance premiums, expenses for oversight, monitoring or advocacy, and funeral and burial expenses.

(7) Assistive technology and personal support services. -- Expenses for assistive technology and personal support with respect to any item described in subparts (1) through (6) above.

§44-16-3. West Virginia Children with Autism Trust Board; creation and composition of the trustee board; duties and responsibilities; reimbursement of expenses.

(a) The West Virginia Children with Autism Trust Board is created to qualify and oversee trust accounts created pursuant to this article and held by approved banks or trust companies for administration by qualified trustees.

(b) The West Virginia Children with Autism Trust Board shall consist of the following governmental officials: The Tax Commissioner or his or her designee, who shall serve as the chair, the Secretary of the Department of Health and Human Resources as set forth in article one, chapter five-f of this code, or his or her designee, and the Commissioner of Banking as set forth in article one, chapter thirty-one-a of this code, or his or her designee. The board shall also consist of the following six public members who shall be appointed by the Governor with advice and consent of the Senate:

(1) An attorney at law, licensed to practice law in this state pursuant to article two, chapter thirty of this code. The
attorney should have extensive knowledge and experience in
the creation, management and administration of trusts;

(2) A counselor licensed in this state pursuant to the
provisions of article thirty-one, chapter thirty of this code.
The counselor should have experience in the delivery of
vocational, rehabilitative or support services to persons with
disabilities;

(3) A physician or psychiatrist licensed in this state
pursuant to the provisions of article three, chapter thirty of
this code. Such physician or psychiatrist must have extensive
knowledge and experience in diagnosis and treatment of
persons with autism;

(4) One public member with a background in advocacy
on behalf of persons with disabilities; and

(5) Two citizen members.

c) Each of the appointments shall be for a period of five
years and appointees are eligible for reappointment at the
expiration of their terms. Of the public members of the board
first appointed, one shall be appointed for a term ending June
30, 2012, and a second for a four-year term. The remainder
shall be appointed for the full five-year terms as provided in
this section. In the event of a vacancy among appointed
members, the Governor shall appoint a person representing
the same interests to fill the unexpired term.

d) Members of the board may not be compensated in
their capacity as members, but shall be reimbursed for
reasonable expenses incurred in the performance of their
duties by the Department of Administration. Expense
payments are to be made at the same rate paid to state
employees.

e) The board shall meet at least once per month to
review and recommend to the Tax Department approval of
proposed qualified trust funds or to conduct other business as
required by this article or section twelve-i, article twenty-one, chapter eleven of this code. Board meetings shall be held in person, by video conference or by teleconference, or a combination thereof. Five members of the board shall constitute a quorum.

(f) Notwithstanding the provision of section four, article six, chapter six of this code, the Governor may remove any board member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

(g) The Department of Administration shall provide support staff and office space for the board.

(h) Nothing in this section creates an obligation of State General Revenue Funds: Provided, That funding for expenses and offices of the West Virginia Children with Autism Trust Board shall be paid, subject to appropriation.

(i) The board may propose rules for legislative approval and may adopt procedural and interpretive rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

§44-16-4. Reports and account.

In addition to any other requirements of this article, the board shall:

(a) Receive annual summary information on the financial condition of qualified trust funds and statements on the qualified trust funds and savings plan accounts from qualified trustees; and

(b) Prepare, or have prepared, by January 1, each year, an annual report on the status of the program, including a summary of the qualified trust funds, and provide a copy of the report to the Joint Committee on Government and
§44-16-5. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of the Freedom of Information Act, located in chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information. Account owners are permitted access to their own personal information.

§44-16-6. Effective date.

This article is effective for years beginning on or after January 1, 2011.

CHAPTER 5

(S.B. 1010 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed June 2, 2009; in effect from passage.] [Approved by the Governor on June 17, 2009.]

AN ACT to amend and reenact §7-1-3jj of the Code of West Virginia, 1931, as amended, relating to ordinances; and providing certain county commissions with authority to regulate the location of businesses offering exotic entertainment.
Be it enacted by the Legislature of West Virginia:

That §7-1-3jj of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3jj. Authority of counties to enact ordinances restricting the location of businesses offering exotic entertainment.

(a) For the purposes of this section:

(1) “Exotic entertainment” means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting or for profit.

(2) “Seminude” means the appearance of:

(A) The female breast below a horizontal line across the top of the areola at its highest point, including the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed, in whole or in part;

(B) A human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals or vulva, with less than a fully opaque covering; or

(C) A human male genital in a discernibly turgid state even if completely and opaquely covered.

(b) A county commission may, by order entered of record, adopt an ordinance that limits the areas of the county in which a business may offer “exotic entertainment”.
However, an ordinance enacted pursuant to this section may not affect a business offering exotic entertainment prior to the effective date of the ordinance.

(c) The ordinance is subject to the provisions of section ten, article seven, chapter eight-a of this code: Provided, That in the event of the partial or total loss of any existing business structure due to fire, flood, accident or any other unforeseen act, that business structure may be repaired or replaced and the business use of that structure may continue notwithstanding the existence of any ordinance authorized by this section. Any repair or replacement is limited to restoring or replacing the damaged or lost structure with one reasonably similar, or smaller, in size as measured in square footage, and any enlargement of the business structure subjects the structure to any existing ordinance authorized by this section.

(d) Notwithstanding any other provision of this code to the contrary, no ordinance enacted pursuant to the provisions of this section applies to or affects any municipal corporation that either: (1) Has adopted and has in effect an ordinance restricting the location of exotic entertainment or substantially similar businesses pursuant to the authority granted in article twelve, chapter eight of this code, or chapter eight-a of this code; or (2) adopts an ordinance to exempt itself from any county ordinance enacted pursuant to this section.

(e) Any person adversely affected by an ordinance enacted pursuant to the authority granted in subsection (b) of this section is entitled to seek direct judicial review with regard to whether the ordinance impermissibly burdens his or her right to establish a business offering exotic entertainment.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-10, relating to critical skills instructional support programs for students in grades three and eight; setting forth legislative findings; providing for the promulgation of rules; establishing minimum provisions of rules; providing condition for promotion for certain students under certain circumstances; precluding county from charging tuition for program; requiring suitable facilities by county boards; preserving ability to retain students; preserving individualized education plans from effect of section; providing for county board preparation; providing that implementation is contingent upon funding; and requiring reports by State Board of Education.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-10, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.
§18-2E-10. Critical skills instructional support programs for third and eighth graders.

(a) The Legislature finds that:

1 (1) In the early childhood through intermediate grade levels, ensuring that each student masters the content and skills needed for mastery at the next grade level is critically important for student success;

2 (2) Students who do not demonstrate grade-level mastery in reading, language arts and mathematics become increasingly less likely to succeed at each successive grade level;

3 (3) State board policy requires every school to establish a student assistance team that reviews student academic needs that have persisted despite being addressed by instruction and intervention and requires every school to implement, in an equitable manner, programs during and after the instructional day at the appropriate instructional levels that contribute to the success of students; and

4 (4) Grades three and eight are critical transition points for additional intervention strategies that reinforce the preparation of students who are not prepared fully for success at the next grade level.

(b) The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, promulgate legislative rules as necessary to effectuate the provisions of this section. The rules shall provide for at least the following:

1 (1) Encouraging and assisting county boards in establishing and operating critical skills instructional support programs during and after the instructional day and during the summer for students in grades three and eight who, in the
judgment of the student assistance team or the student’s classroom teacher, are not mastering the content and skills in reading, language arts and mathematics adequately for success at the next grade level and who are recommended by the student assistance team or the student’s classroom teacher for additional academic help through the programs;

(2) Maximizing parental involvement in supporting the critical skills development of their children in reading, language arts and mathematics through critical skills instructional support programs;

(3) Ensuring the employment of qualified teachers and service personnel in accordance with the provisions of section thirty-nine, article five of this chapter and section seven-c, article four, chapter eighteen-a of this code to provide instruction to students enrolled in critical skills instructional support programs;

(4) Creating a formula or grant-based program for the distribution of funds appropriated specifically for the purposes of this section or otherwise available for the support of in-school, after-school and summer critical skills instructional support programs;

(5) Providing transportation and healthy foods for students required to attend after-school and summer critical skills instructional support programs and supervision at the school that accommodates the typical work schedules of parents; and

(6) Receiving from county boards any applications and annual reports required by rule of the state board.

(c) A student in grades three or eight who is recommended by the student assistance team or the student’s classroom teacher for additional academic help in one or more of the subjects of reading, language arts and
mathematics through a critical skills instructional support program may be required to attend a summer critical skills instructional support program as a condition for promotion if:

(1) The student has been provided additional academic help through an in-school or after-school critical skills instructional support program and, prior to the end of the school year, the student assistance team or the student’s classroom teacher recommends that further additional academic help is needed for the student to be successful at the next grade level; and

(2) The county board has established a critical skills instructional support program during the summer months for the student’s grade level.

(d) County boards shall provide suitable educational facilities, equipment and services to support critical skills instructional support programs established pursuant to this section. Summer programs may be provided at a central location for third and eighth graders who qualify for the program.

(e) This section may not be construed to prohibit a classroom teacher from recommending the grade level retention of a student based upon the student’s lack of mastery of the subject matter and preparation for the subject matter at the next grade level.

(f) This section may not be construed to affect the individualized education plans of exceptional students.

(g) This section may not be construed to limit the authority of the county board to establish a summer school program in accordance with section thirty-nine, article five of this chapter. County boards may not charge tuition for enrollment in critical skills instructional support programs established pursuant to this section.
(h) Each county board shall prepare to implement the provisions of this section and the provisions of the state board rule required by subsection (b) of this section. The preparations shall at least include planning, ensuring the student assistance teams are established as currently required by state board policy and performing a needs assessment.

(i) The state board shall provide a report describing the proposed implementation of the critical skills instructional support program to be instituted for the summer of 2010 to the Legislative Oversight Commission on Education Accountability on or before May 1, 2010.

(j) The state board shall provide a comprehensive report regarding the status of the critical skills instructional support program to the Legislative Oversight Commission on Education Accountability, the Joint Committee on Government and Finance, and the Governor on November 1, 2010, and annually on November 1 on each year thereafter. The report shall address, at a minimum, the progress of the program throughout the state, its effect on student achievement and the sources of the funding both available to and used by the program.

(k) The provisions of this section shall be subject to the availability of funds from legislative appropriation or other sources specifically designated for the purposes of this section. If a county board determines that adequate funds are not available for full implementation of a critical skills instructional support program in the county, the county board may implement its program in phases by first establishing a critical skills instructional support program in the third grade and then establishing a critical skills instructional support program for the eighth grade once the county board determines that adequate funds are available.
AN ACT to amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-1-1 of said code; and to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code, all relating to the hiring, termination, transfer and reassignment of teachers and school personnel; revising definition of "long-term substitute"; revising certain dates upon which action must be taken with respect to the hiring, termination, resignation or transfer of teachers and school personnel; clarifying probationary professional employee contract; providing conditional contract of prospective and recent graduates and prospective employable professional personnel; revising dates regarding the early notification of retirement; providing for nonrevocation of early notification; and providing an economic hardship exception.

Be it enacted by the Legislature of West Virginia:

That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-1-1 of said code be amended and reenacted; and that §18A-2-2, §18A-2-6, §18A-2-7 and
§18A-2-8a of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

(a) The county board shall meet on the first Monday in July, and upon the dates provided by law for the laying of levies, and at any other times the county board fixes upon its records. Subject to adequate public notice, nothing in this section prohibits the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting as authorized in this section and in compliance with the provisions of chapter eighteen-a of this code, the county board may employ qualified teachers, or those who will qualify by the time they enter upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. Meetings of the county board shall be held in compliance with the provisions of chapter eighteen-a of this code for purposes relating to the assignment, transfer, termination and dismissal of teachers and other school employees.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.

(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made available to the public for inspection and within a reasonable time prior
to the submission of the budget to the state board for approval. Reasonable time shall be granted at the hearing to any person who wishes to speak regarding any part of the budget. Notice of the hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(d) A majority of the members of the county board constitutes the quorum necessary for the transaction of official business.

(e) Board members may receive compensation at a rate not to exceed $160 per meeting attended, but they may not receive pay for more than fifty meetings in any one fiscal year. Board members who serve on an administrative council of a multicounty vocational center also may receive compensation for attending up to twelve meetings of the council at the same rate as for meetings of the county board. Meetings of the council are not counted as board meetings for purposes of determining the limit on compensable board meetings.

(f) Members also shall be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the county board.

(g) When, by a majority vote of its members, a county board considers it a matter of public interest, the county board may join the West Virginia School Board Association and the National School Board Association and may pay the dues prescribed by the associations and approved by action of the respective county boards. Membership dues and actual traveling expenses incurred by board members for attending meetings of the West Virginia School Board Association may be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance may be made except upon sworn itemized statements.
CHAPTER 18A. SCHOOL PERSONNEL.

Article

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1. The definitions contained in section one, article one, chapter eighteen of this code apply to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant to this chapter have the meanings ascribed to them unless the context clearly indicates a different meaning:

7. (a) "School personnel" means all personnel employed by a county board whether employed on a regular full-time basis, an hourly basis or otherwise. "School personnel" is comprised of two categories: Professional personnel and service personnel;

(b) "Professional person" or "professional personnel" means those persons or employees who meet the certification requirements of the state, licensing requirements of the state, or both, and includes a professional educator and other professional employee;

(c) "Professional educator" has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators are classified as follows:

(1) "Classroom teacher" means a professional educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in this capacity;
(2) "Principal" means a professional educator who functions as an agent of the county board and has responsibility for the supervision, management and control of a school or schools within the guidelines established by the county board. The principal’s major area of responsibility is the general supervision of all the schools and all school activities involving students, teachers and other school personnel;

(3) "Supervisor" means a professional educator who is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement. This category includes other appropriate titles or positions with duties that fit within this definition; and

(4) "Central office administrator" means a superintendent, associate superintendent, assistant superintendent and other professional educators who are charged with administering and supervising the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition;

(d) "Other professional employee" means a person from another profession who is properly licensed and who is employed to serve the public schools. This definition includes a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses, who is employed by a county board and has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service person" or "service personnel", whether singular or plural, means a nonteaching school employee who is not included in the meaning of "teacher" as defined in section one, article one, chapter eighteen of this code and who serves the school or schools as a whole, in a
nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen of this code means service person or service personnel as defined in this section;

(f) "Principals Academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter;

(g) "Center for Professional Development" means the center created pursuant to section one, article three-a of this chapter;

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its employees who wish to divide between them the duties and responsibilities of one authorized full-time position;

(i) "Prospective employable professional person", whether singular or plural, means a certified professional educator who:

(1) Has been recruited on a reserve list of a county board;

(2) Has been recruited at a job fair or as a result of contact made at a job fair;

(3) Has not obtained regular employee status through the job posting process provided in section seven-a, article four of this chapter; and

(4) Has obtained a baccalaureate degree from an accredited institution of higher education within the past year;
(j) "Dangerous student" means a student who is substantially likely to cause serious bodily injury to himself, herself or another individual within that student’s educational environment, which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the student, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense;

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions; and

(l) "Long-term substitute" means a substitute employee who fills a vacant position:

That the county superintendent expects to extend for at least thirty consecutive days, and is either:

(A) Listed in the job posting as a long-term substitute position of over thirty days; or

(B) Listed in a job posting as a regular, full-time position and:

(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 2. SCHOOL PERSONNEL.
§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

§18A-2-6. Continuing contract status for service personnel; termination.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall state the salary to be paid and shall be in the form prescribed by the state superintendent. Each contract shall be signed by the teacher and by the president and secretary of the county board and shall be filed, together with the certificate of the teacher, by the secretary of the office of the county board: Provided, That when necessary to facilitate the employment of employable professional personnel and prospective and recent graduates of teacher education programs who have not yet attained certification, the contract may be signed upon the condition that the certificate is issued to the employee prior to the beginning of the employment term in which the employee enters upon his or her duties.

(b) Each teacher's contract, under this section, shall be designated as a probationary or continuing contract. A probationary teacher’s contract shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for a
bachelor's degree and the county board enter into a new contract of employment, it shall be a continuing contract, subject to the following:

(1) Any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the three-year probationary period shall upon qualifying for the professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status; and

(2) A teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if the employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated, subject to the following:

(1) A continuing contract may not be terminated except:

(A) By a majority vote of the full membership of the county board on or before February 1 of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action on the termination issue; or

(B) By written resignation of the teacher on or before February 1 to initiate termination of a continuing contract;

(2) The termination shall take effect at the close of the school year in which the contract is terminated;
(3) The contract may be terminated at any time by mutual consent of the school board and the teacher;

(4) This section does not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article;

(5) A continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

(6) A continuing contract does not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. No teacher may be employed by the board until each qualified teacher upon the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the
contractual rights of the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) Any teacher who fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness or other just cause or unless released from his or her contract by the board, or who violates any lawful provision of the contract, is disqualified to teach in any other public school in the state for a period of the next ensuing school year and the State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation: Provided, That marriage of a teacher is not considered a failure to fulfill, or violation of, the contract.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a county board or request a leave of absence, the resignation or leave of absence to become effective on or before July 15 of the same year and after completion of the employment term, may do so at any time during the school year by written notification of the resignation or leave of absence and any notification received by a county board shall automatically extend the teacher's public employee insurance coverage until August 31 of the same year.

(g) (1) A classroom teacher who gives written notice to the county board on or before December 1 of the school year of his or her retirement from employment with the board at the conclusion of the school year shall be paid $500 from the
Early Notification of Retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment shall not be counted as part of the final average salary for the purpose of calculating retirement.

(2) The position of a classroom teacher providing written notice of retirement pursuant to this subsection may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position. However, the retiring classroom teacher may be permitted to continue his or her employment in that position and forfeit the early retirement notification payment if, after giving notice of retirement in accordance with this subsection, he or she becomes subject to a significant unforeseen financial hardship, including a hardship caused by the death or illness of an immediate family member or loss of employment of a spouse. Other significant unforeseen financial hardships shall be determined by the county superintendent on a case-by-case basis. This subsection does not prohibit a county school board from eliminating the position of a retiring classroom teacher.

§18A-2-6. Continuing contract status for service personnel; termination.
After three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status: Provided, That a service personnel employee holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before February 1 of the then current year, or by written resignation of the employee on or before that date. The affected employee has the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this legislation shall be granted continuing contract status.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

(a) The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before February 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration
for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest the proposed transfer may request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before March 15. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before March 15 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of the meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to the persons' last known addresses within ten days following the board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor.

(c) The superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education and the period of suspension may not exceed thirty days unless extended by order of the board.
(d) The provisions of this section respecting hearing upon
notice of transfer is not applicable in emergency situations
where the school building becomes damaged or destroyed
through an unforeseeable act and which act necessitates a
transfer of the school personnel because of the
aforementioned condition of the building.

§18A-2-8a. Notice to probationary personnel of rehiring or
nonrehiring; hearing.

The superintendent at a meeting of the board on or before
March 15 of each year shall provide in writing to the board
a list of all probationary teachers that he or she recommends
to be rehired for the next ensuing school year. The board
shall act upon the superintendent's recommendations at that
meeting in accordance with section one of this article. The
board at this same meeting shall also act upon the retention
of other probationary employees as provided in sections two
and five of this article. Any such probationary teacher or
other probationary employee who is not rehired by the board
at that meeting shall be notified in writing, by certified mail,
return receipt requested, to such persons' last known
addresses within ten days following said board meeting, of
their not having been rehired or not having been
recommended for rehiring.

Any probationary teacher who receives notice that he or
she has not been recommended for rehiring or other
probationary employee who has not been reemployed may
within ten days after receiving the written notice request a
statement of the reasons for not having been rehired and may
request a hearing before the board. The hearing shall be held
at the next regularly scheduled board of education meeting or
a special meeting of the board called within thirty days of the
request for hearing. At the hearing, the reasons for the
nonrehiring must be shown.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all relating to school innovation zones; setting forth legislative findings, intent and purpose; authorizing state board to designate school innovation zones in schools, groups of schools and departments or subdivisions of a school or schools; establishing an application, plan review, approval and amendment process; authorizing exceptions to certain policies, rules, interpretations and statutes; providing for approval of the innovation zone plan by certain employees of a school; providing for revocation of designation and plan approval; requiring annual report by the state board; designating the order in which the state board must consider applications; providing for the voluntary transfer of employees; authorizing teacher job postings that exceed certain qualifications and requirements; providing that a state institution of higher education may establish a school designated as an innovation zone and that such school may not receive certain funds; providing the procedure in which a state institution of higher education may apply for and establish an innovation zone school; providing for the approval mechanism
for an innovation zone school established by a state institution of higher education by the county board and state board; and authorizing the State Board of Education to promulgate rules and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-1. Title.

§18-5B-2. Legislative findings and purpose.

§18-5B-3. School innovation zones; application for designation; state board rule.

§18-5B-4. Innovation zones; required plans; plan approval; state board rule.

§18-5B-5. Approval of innovation zone plans; waiver of statutes, policies, rules or interpretations.

§18-5B-6. Employee approval of innovation plan application and plan; transfer of employees.

§18-5B-7. Progress reviews and annual reports.

§18-5B-8. Teacher vacancies in an innovation zone; job postings exceeding certain qualifications and requirements; approval of posting.

§18-5B-9. Establishment of new innovation zone schools by state institutions of higher education.

§18-5B-1. Title.

This article shall be known as the “School Innovation Zones Act”.

§18-5B-2. Legislative findings and purpose.

(a) Legislative findings. -- The Legislature finds that:

(1) Decades of school improvement literature substantiate that schools where the principal uses a collaborative and distributed approach to leadership and where the teachers have a unity of purpose, operate in a cohesive learning-centered culture and implement consistent, pervasive and research-based approaches to learning, can and do improve student learning;
(2) As in all enterprises, rules are established in public education to manage the resources efficiently, allot time among the activities and processes required and ensure attention to the goals mandated, but rules, by their nature, also limit the flexibility of professional educators to engage in those activities and implement those approaches that may best improve the learning of their students for the twenty-first century;

(3) Allowing individual schools to seek and receive exceptions from certain statutes, policies, rules and interpretations through the creation of school innovation zones will provide them greater control over important educational factors that impact student achievement, such as curriculum, personnel, organization of the school day, organization of the school year, technology utilization and the delivery of educational services to improve student learning; and

(4) Providing greater flexibility at innovation zone schools will enable school-level, professional educators to exercise more fully their professional judgment to improve student learning for the twenty-first century by instituting creative and innovative practices.

(b) Intent and purpose. — The intent and purpose of this article is to:

(1) Provide for the establishment of school innovation zones to improve educational performance;

(2) Provide principals and teachers at schools approved as innovation zones with greater flexibility and control to meet the needs of a diverse population of students by removing certain policy, rule, interpretive and statutory constraints;
(3) Provide a testing ground for innovative educational reform programs and initiatives to be applied on an individual school level;

(4) Provide information regarding the effects of specific innovations and policies on student achievement;

(5) Document educational strategies that enhance student success; and

(6) Increase the accountability of the state’s public schools for student achievement as measured by the state assessment programs and local assessment processes identified by the schools.

§18-5B-3. School innovation zones; application for designation; state board rule.

(a) A school, a group of schools, a subdivision or department of a group of schools, or a subdivision or department of a school may be designated as an innovation zone in accordance with this article.

(b) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this article. The rule shall include provisions for at least the following:

(1) A process for a school, a group of schools, a subdivision or department of a group of schools or a subdivision or department of a school to apply for designation as an innovation zone that encompasses at least the following:

(A) The manner, time and process for the submission of an innovation zone application;
(B) The contents of the application, which must include
a general description of the innovations the school or schools
seek to institute and an estimation of the employees who may
be affected by the implementation of the innovations; and

(C) Factors to be considered by the state board when
evaluating an application, which shall include, but are not
limited to, the following factors:

(i) The level of staff commitment to apply for designation
as an innovation zone as determined by a vote by secret
ballot at a special meeting of employees eligible to vote on
the plan, as provided in section six of this article;

(ii) Support from parents, students, the county board of
education, the local school improvement council and school
business partners; and

(iii) The potential for an applicant to be successful as an
innovation zone; and

(2) Standards for the state board to review applications
for designation as innovation zones and to make
determinations on the designation of innovation zones.

(c) The state board shall review innovation zone
applications in accordance with the standards adopted by the
board and shall determine whether to designate the applicant
as an innovation zone. The state board shall notify an
applicant of the board's determination within sixty days of
receipt of an innovation zone application.

When initially designating innovation zones after the
enactment of this article by the first extraordinary session of
the 2009 Legislature, the state board shall consider applicants
for designation in the following order: (1) A school and
groups of schools; (2) a group of schools seeking designation
across the same subdivision or department of the schools; and (3) a school seeking designation of a subdivision or a department.

§18-5B-4. Innovation zones; required plans; plan approval; state board rule.

(a) The rule promulgated by the state board pursuant to section three of this article also shall include at least the following:

(1) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated as an innovation zone or seeking designation as an innovation zone in accordance with this article shall develop an innovation zone plan;

(2) The innovation zone plan shall contain:

(A) A description of the programs, policies or initiatives the school, group of schools, subdivision or department of a group of schools or subdivision or department of a school intends to implement as an innovative strategy to improve student learning if the plan is approved in accordance with section five of this article;

(B) A list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation. A school, a group of schools, a subdivision or department of a group of schools or a subdivision or department of a school may not request an exception nor may an exception be granted from any of the following:
(i) An assessment program administered by the West Virginia Department of Education;

(ii) Any provision of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(iii) Section seven, article two and sections seven-a, seven-b, eight and eight-b, article four, chapter eighteen-a of this code, except as provided in section eight of this article; and

(C) Any other information the state board requires.

(3) The innovation zone plan may include:

(A) An emphasis in the early childhood through intermediate grade levels on ensuring that each student is prepared fully at each grade level, including additional intervention strategies at grade levels three and eight to reinforce the preparation of students who are not prepared fully for promotion, or an emphasis in the secondary grade levels on ensuring that each student is prepared fully for college or other post-secondary education, as applicable for the school; and

(B) An emphasis on innovative strategies that allows academically advanced students to pursue academic learning above grade level or not available through the normal curriculum at the school.

(b) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated or seeking designation as an innovation zone shall submit its innovation zone plan to the school's employees, the county superintendent and county board having jurisdiction over the school, the state
§18-5B-5. Approval of innovation zone plans; waiver of statutes, policies, rules or interpretations.

(a) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated or seeking designation as an innovation zone shall:

(1) Submit its innovation zone plan to each employee regularly employed at the school if the employee's primary job duties would be affected by the implementation of the plan. An innovation zone plan is approved by school employees when approved by a vote by secret ballot as provided in section six of this article;

(2) Submit its innovation zone plan as approved by vote of school employees to the county superintendent and board for review. The county board shall within sixty days of receipt of the plan review the plan and with recommendations from the county superintendent report its support or concerns, or both, and return the plan and report to the school principal, faculty senate and local school improvement council; and

(3) Submit its innovation zone plan as approved by vote of the school employees eligible to vote on the plan along with the report of the county board to the state board and state superintendent for review. The county board shall be given an opportunity to present its concerns with the plan, if any, to the state board during its review. Except as provided in subsection (c) of this section, the state board and state superintendent shall approve or disapprove the plan within sixty days of receipt, subject to the following:
(A) No exceptions to county or state board rules, policies or interpretations are granted unless both the state superintendent and the state board approve the plan at least conditionally pursuant to subsections (b) and (c) of this section; and

(B) If the plan is disapproved, the state superintendent, the state board or both, as applicable, shall communicate the reasons for the disapproval to the school, the group of schools, the subdivision or department of a group of schools or the subdivision or department of a school and shall make recommendations for improving the plan. The school, the group of schools, the subdivision or department of a group of schools or the subdivision or department of a school may amend the plan pursuant to subsection (d) of this section.

(b) Upon the approval of an innovation zone plan by the state board and state superintendent, all exceptions to county and state board rules, policies and interpretations listed within the plan are granted, subject to the limitations contained in subdivision (B), subparagraph (2), subsection (a) of section four of this article.

(c) If an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception. If the state board and state superintendent approve a plan on that condition, the state board and state superintendent shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the Legislative Oversight Commission on Education Accountability. The commission shall review the plan and exemption request and make a recommendation to the Legislature regarding the exception requested.
(d) The rule promulgated by the state board pursuant to section three of this article shall include a process for amending or revising an innovation zone plan. The process shall require that any amendments or revisions to an innovation zone plan are subject to the approval requirements of subsection (a) of this section.

§18-5B-6. Employee approval of innovation plan application and plan; transfer of employees.

(a) An employee shall be eligible to vote in accordance with the provisions of this section if: (1) The employee is regularly employed at the school; and (2) the employee’s primary job duties will be affected by the implementation of the innovation zone plan. The panel created in subsection (c) of this section and the principal shall determine which employees are eligible to vote in accordance with this subsection. No employee may be eligible to vote unless both the panel and the principal determine that the employee is eligible to vote.

(b) A secret ballot vote at a special meeting of all employees regularly employed at the school who are eligible to vote in accordance with this section shall be conducted to determine the following:

(1) The level of employee commitment to apply for designation as an innovation zone in accordance with section three of this article; and

(2) The approval of an innovation zone plan as required by section five of this article.

(c) A panel consisting of the elected officers of the faculty senate of the school or schools, one representative of the service personnel employed at the school and three parent members appointed by the local school improvement council
shall call the meeting required in subsection (b) of this section, conduct the votes and certify the results to the principal, the county superintendent and the president of the county board. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote.

(d) At least eighty percent of the employees who are eligible to vote in accordance with this section must vote to apply for designation as an innovation zone and to approve the school’s innovation zone plan before the level of staff commitment at the school is sufficient for the school to apply for designation and before the plan is approved by the school.

(e) An employee regularly employed at a school applying for or designated as an innovation zone whose job duties may be affected by implementation of the innovation zone plan or proposed plan may request a transfer to another school in the school district. The county board shall make every reasonable effort to accommodate the transfer.

§18-5B-7. Progress reviews and annual reports.

(a) At least annually, the state board or its designated committee shall review the progress of the development or implementation of an innovation zone plan. If, following such a review, the state board determines that a designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section nine of this article has not made adequate progress toward developing or implementing its plan, the board shall submit a report to the designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school
created by a state institution of higher education in accordance with section nine of this article identifying its areas of concern. The state board or its designated committee may conduct an additional review within six months of submitting a report in accordance with this section. If, following such additional review, the state board or its designated committee determines that the designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section nine of this article has not made adequate progress toward developing or implementing its innovation zone plan, the state board may revoke the designation as an innovation zone or, if the innovation zone plan has been approved in accordance with section five of this article, rescind its approval of the plan.

(b) The state board shall provide an annual report on innovation zones and the progress of innovation zone plans to the Legislative Oversight Committee for Educational Accountability.

§18-5B-8. Teacher vacancies in an innovation zone; job postings exceeding certain qualifications and requirements; approval of postings.

A school, group of schools, subdivision or department of a group of schools, or a subdivision or department of a school whose school innovation zone plan has been approved in accordance with section five of this article may make a job posting for a teacher vacancy at the school, the group of schools, the subdivision or department of a group of schools, or the subdivision or department of a school designated as an innovation zone that sets forth standards or qualifications that exceed the standards and qualifications provided in section seven-a, article four, chapter eighteen-a of this code:
Provided, That teachers in the county approve the job posting by majority vote: Provided, however, That the county superintendent administers the vote and the record of the vote remains on file in the personnel office of the county board until the school group of schools, subdivision or department of a group of schools, or a subdivision or department of a school is no longer designated as an innovation zone.

§18-5B-9. Establishment of new innovation zone schools by state institutions of higher education.

(a) A state institution of higher education may establish a new innovation zone school subject to the following:

(1) The school will be under the jurisdiction of the state institution of higher education;

(2) The county board with jurisdiction over the school district in which the new school is planned to be located must approve the establishment of the new innovation zone school;

(3) The state institution of higher education must enter into cooperative agreements with the county board or county boards whose students attend the new innovation zone school. The agreements shall include at least required reporting on student attendance, academic progress and any other matters relating to the administration, operation and support of the school agreed to by institution and the board or boards;

(4) Students attending the school shall be enrolled in a school in their county of residence subject to the policies of the county. The students may participate in extracurricular and cocurricular activities at the county school in which they are enrolled and, subject to the cooperative agreement with the state institution of higher education, participate in
curricular activities at the county school in which they are enrolled;

(5) No funds provided to support the planning and implementation of school innovation zones pursuant to this article may be used for a state institution of higher education to establish a new innovation zone school; and

(6) A school established in accordance with this section may not be funded with: (1) Moneys appropriated by the Legislature to fund the innovation zone program; or (2) state or county moneys that result from the school aid formula.

(b) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code for a state institution of higher education to establish a new innovation zone school. The rule shall include provisions for at least the following:

(1) A process for a state institution of higher education in accordance with this section to apply for designation as innovation zone and for approval of its innovation zone plan that encompasses at least the following:

(A) The manner, time and process for the submission of an application for innovation zone designation and for approval of its innovation zone plan;

(B) The contents of the application; and

(C) Factors to be considered by the state board when evaluating an application and plan, which shall include, but are not limited to, support from parents, students, county board or boards of education, the local school improvement council or councils and school business partners and the potential for a school to be successful as an innovation zone.
A school created by state institution of higher education designated as an innovation zone or seeking designation as an innovation zone in accordance with this section shall develop an innovation zone plan that includes at least the following:

(A) A description of the programs, policies or initiatives the state institution of higher education intends to implement as an innovative strategy to improve student learning if the plan is approved;

(B) The approval of the county board of education with jurisdiction over the school district in which the new school is planned to be or is located and the cooperative agreements with the county board or county boards whose students attend the new innovation zone school;

(C) A list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation;

(D) A policy under which the state institution of higher education and participating county board or boards of education agree to meet the accountability requirements for student assessment under all applicable assessment programs administered by the West Virginia Department of Education and provisions of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(E) Any other information the state board requires.
(3) Standards for the state board to review applications for designation as innovation zones and to make determinations on the approval of innovation zone plans.

(c) The state board and state superintendent shall review innovation zone applications and plans of a school created by a state institution of higher education in accordance with the standards adopted by the board and shall determine whether to designate it as an innovation zone or approve it plan, as applicable. The state board and state superintendent shall notify an applicant of the board’s determination within sixty days of receipt of an innovation zone application and receipt of an innovation zone plan. If the plan is disapproved, the state board and state superintendent shall communicate the reasons for the disapproval to the school and make recommendations for improving the plan. The school may amend and resubmit the plan to the state board.

(d) Upon the approval of an innovation zone plan by the state board and state superintendent, all exceptions to county and state board rules, policies and interpretations listed within the plan are granted. If an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception. If the state board and state superintendent approve a plan on that condition, the state board and state superintendent shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the Legislative Oversight Commission on Education Accountability. The commission shall review the plan and request and make a recommendation to the Legislature on the exception requested.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all relating to an alternative and renewable energy portfolio standard; setting forth legislative findings; defining terms; establishing standards for the sale of electricity generated from alternative and renewable energy resources; providing for compliance assessments; creating a system of tradable alternative and renewable energy resource credits; providing for the awarding of credits based upon electricity generated or purchased from alternative and renewable energy resource facilities; providing for the awarding of credits for certain greenhouse emissions reduction and offset projects; providing for the awarding of credits for certain energy efficiency and demand-side energy initiative projects; requiring application to the Public Service Commission for approval of alternative and renewable energy portfolio standard compliance plans; setting forth minimum requirements for compliance plan applications; requiring Public Service Commission approval of compliance plan applications; requiring annual progress reports; providing for incentive rate making for investments in new alternative and renewable
energy resource facilities in West Virginia; requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards; authorizing interagency agreements; requiring an ongoing assessment of alternative and renewable energy resources in West Virginia; requiring Public Service Commission to consider adopting portfolio standards for certain electric cooperatives and other electric facilities or utilities; requiring Public Service Commission to consider extending alternative and renewable resource credits to electric distribution companies or electric generation suppliers other than electric utilities; establishing the Alternative and Renewable Energy Resources Research Fund; providing for the awarding of matching grants for certain research projects; and authorizing the Public Service Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all to read as follows:

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.

§24-2F-1. Short title.
§24-2F-2. Legislative findings.
§24-2F-3. Definitions.
§24-2F-4. Awarding of alternative and renewable energy resource credits.
§24-2F-5. Alternative and renewable energy portfolio standard; compliance assessments.
§24-2F-6. Alternative and renewable energy portfolio standard compliance plan; application; approval; and progress report.
§24-2F-7. Cost recovery and rate incentives for electric utility investment in alternative and renewable energy resources.
§24-2F-9. Interagency agreements; alternative and renewable energy resource planning assessment.
§24-2F-10. Portfolio requirements for rural electric cooperatives, municipality owned electric facilities or utilities serving less than thirty thousand residential customers in West Virginia; and alternative and renewable energy resource credits for nonutility generators.
§24-2F-1. Short title.

This article may be known and cited as the Alternative and Renewable Energy Portfolio Act.

§24-2F-2. Legislative findings.

The Legislature finds that:

1. West Virginia has served the nation for many years as a reliable source of electrical power;

2. The nation is on a rapid course of action to produce electrical power with an ever decreasing amount of emissions;

3. To continue lowering the emissions associated with electrical production, and to expand the state’s economic base, West Virginia should encourage the development of more efficient, lower-emitting and reasonably priced alternative and renewable energy resources;

4. The development of a robust and diverse portfolio of electric-generating capacity is needed for West Virginia to continue its success in attracting new businesses and jobs. This portfolio must include the use of alternative and renewable energy resources at new and existing facilities;

5. West Virginia has considerable natural resources that could support the development of alternative and renewable energy resource facilities at a reasonable price;

6. Alternative and renewable energy resources can be utilized now to meet state and federal environmental standards, including those reasonably anticipated to be mandated in the future; and
It is in the public interest for the state to encourage the construction of alternative and renewable energy resource facilities that increase the capacity to provide for current and anticipated electric energy demand at a reasonable price.

§24-2F-3. Definitions.

Unless the context clearly requires a different meaning, as used in this article:

(1) “Advanced coal technology” means a technology that is used in a new or existing energy generating facility to reduce airborne carbon emissions associated with the combustion or use of coal and includes, but is not limited to, carbon dioxide capture and sequestration technology, supercritical technology, ultrasupercritical technology and pressurized fluidized bed technology.

(2) “Alternative and renewable energy portfolio standard” or “portfolio standard” means a requirement in any given year that requires an electric utility to own credits in an amount equal to a certain percentage of electric energy sold in the preceding calendar year by the electric utility to retail customers in this state.

(3) “Alternative energy resources” means any of the following resources, methods or technologies for the production or generation of electricity:

(A) Advanced coal technology;
(B) Coal bed methane;
(C) Natural gas;
(D) Fuel produced by a coal gasification or liquefaction facility;
(E) Synthetic gas;
(F) Integrated gasification combined cycle technologies;
(G) Waste coal;
(H) Tire-derived fuel;
(I) Pumped storage hydroelectric projects;
(J) Recycled energy, which means useful thermal, mechanical or electrical energy produced from: (i) Exhaust heat from any commercial or industrial process; (ii) waste gas, waste fuel or other forms of energy that would otherwise be flared, incinerated, disposed of or vented; and (iii) electricity or equivalent mechanical energy extracted from a pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat; and
(K) Any other resource, method, project or technology certified as an alternative energy resource by the Public Service Commission.

(4) "Alternative and renewable energy resource credit" or "credit" means a tradable instrument that is used to establish, verify and monitor the generation of electricity from alternative and renewable energy resource facilities, energy efficiency or demand-side energy initiative projects or greenhouse gas emission reduction or offset projects.

(5) "Alternative energy resource facility" means a facility or equipment that generates electricity from alternative energy resources.

(6) "Commission" or "Public Service Commission" means the Public Service Commission of West Virginia as continued pursuant to section three, article one of this chapter.
(7) “Customer-generator” means an electric retail customer who owns and operates a customer-sited generation project utilizing an alternative or renewable energy resource or a net metering system in this state.

(8) “Electric utility” means any electric distribution company or electric generation supplier that sells electricity to retail customers in this state. Unless specifically provided for otherwise, for the purposes of this article, the term “electric utility” may not include rural electric cooperatives, municipally-owned electric facilities or utilities serving less than thirty thousand residential electric customers in West Virginia.

(9) “Energy efficiency or demand-side energy initiative project” means a project in this state that promotes customer energy efficiency or the management of customer consumption of electricity through the implementation of:

(A) Energy efficiency technologies, equipment, management practices or other strategies utilized by residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers;

(B) Load management or demand response technologies, equipment, management practices, interruptible or curtailable tariffs, energy storage devices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand;

(C) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including, but not limited to, the reuse of energy from exhaust gases or other manufacturing by-products that can be used in the direct production of electricity at the customer’s facility;
(D) Customer-sited generation, demand-response, energy efficiency or peak demand reduction capabilities, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs; or

(E) Infrastructure and modernization projects that help promote energy efficiency, reduce energy losses or shift load from periods of higher demand to periods of lower demand, including the modernization of metering and communications (also known as "smart grid"), distribution automation, energy storage, distributed energy resources and investments to promote the electrification of transportation.

(10) "Greenhouse gas emission reduction or offset project" means a project to reduce or offset greenhouse gas emissions from sources in this state other than the electric utility's own generating and energy delivery operations. Greenhouse gas emission reduction or offset projects include, but are not limited to:

(A) Methane capture and destruction from landfills, coal mines or farms;

(B) Forestation, afforestation or reforestation; and

(C) Nitrous oxide or carbon dioxide sequestration through reduced fertilizer use or no-till farming.

(11) "Net metering" means measuring the difference between electricity supplied by an electric utility and electricity generated from an alternative or renewable energy resource facility owned or operated by an electric retail customer when any portion of the electricity generated from the alternative or renewable energy resource facility is used to offset part or all of the electric retail customer’s requirements for electricity.
(12) “Reclaimed surface mine” means a surface mine, as that term is defined in section three, article three, chapter twenty-two of this code, that is reclaimed or is being reclaimed in accordance with state or federal law.

(13) “Renewable energy resource” means any of the following resources, methods, projects or technologies for the production or generation of electricity:

(A) Solar photovoltaic or other solar electric energy;

(B) Solar thermal energy;

(C) Wind power;

(D) Run of river hydropower;

(E) Geothermal energy, which means a technology by which electricity is produced by extracting hot water or steam from geothermal reserves in the earth’s crust to power steam turbines that drive generators to produce electricity;

(F) Biomass energy, which means a technology by which electricity is produced from a nonhazardous organic material that is available on a renewable or recurring basis, including pulp mill sludge;

(G) Biologically derived fuel including methane gas, ethanol not produced from corn, or biodiesel fuel;

(H) Fuel cell technology, which means any electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion; and

(I) Any other resource, method, project or technology certified by the commission as a renewable energy resource.
143 (14) "Renewable energy resource facility" means a facility or equipment that generates electricity from renewable energy resources.

146 (15) "Waste coal" means a technology by which electricity is produced by the combustion of the by-product, waste or residue created from processing coal (such as gob).

§24-2F-4. Awarding of alternative and renewable energy resource credits.

(a) Credits established. -- The Public Service Commission shall establish a system of tradable credits to establish, verify and monitor the generation and sale of electricity generated from alternative and renewable energy resource facilities. The credits may be traded, sold or used to meet the portfolio standards established in section five of this article.

(b) Awarding of credits. -- Credits shall be awarded as follows:

(1) An electric utility shall be awarded one credit for each megawatt hour of electricity generated or purchased from an alternative energy resource facility located within the geographical boundaries of this state or located outside of the geographical boundaries of this state but within the service territory of a regional transmission organization, as that term is defined in 18 C.F.R. §35.34, that manages the transmission system in any part of this state;

(2) An electric utility shall be awarded two credits for each megawatt hour of electricity generated or purchased from a renewable energy resource facility located within the geographical boundaries of this state or located outside of the geographical boundaries of this state but within the service territory of a regional transmission organization, as that term
is defined in 18 C.F.R. §35.34, that manages the transmission system in any part of this state;

(3) An electric utility shall be awarded three credits for each megawatt hour of electricity generated or purchased from a renewable energy resource facility located within the geographical boundaries of this state if the renewable energy resource facility is sited upon a reclaimed surface mine; and

(4) A customer-generator shall be awarded one credit for each megawatt hour of electricity generated from an alternative energy resource facility and shall be awarded two credits for each megawatt hour of electricity generated from a renewable energy resource facility.

(c) Acquiring of credits permitted. --

(1) An electric utility may meet the alternative and renewable energy portfolio standards set forth in this article by purchasing additional credits. Credits may be bought or sold by an electric utility or customer-generator or banked and used to meet an alternative and renewable energy portfolio standard requirement in a subsequent year.

(2) Each credit transaction shall be reported by the selling entity to the Public Service Commission on a form provided by the commission.

(3) As soon as reasonably possible after the effective date of this section, the commission shall establish a registry of data that shall track credit transactions and shall list the following information for each transaction: (i) The parties to the transaction; (ii) the number of credits sold or transferred; and (iii) the price paid. Information contained in the registry shall be available to the public.

(4) The commission may impose an administrative transaction fee on a credit transaction in an amount not to
1906 ENERGY PORTFOLIO STANDARDS [Ch. 9

exceed the actual direct cost of processing the transaction by
the commission.

(d) Credits for certain emission reduction or offset
projects. —

(1) The commission may award credits to an electric
utility for greenhouse gas emission reduction or offset
projects. For each ton of carbon dioxide equivalent reduced
or offset as a result of an approved greenhouse gas emission
reduction project, the commission shall award an electric
utility one credit: Provided, That the emissions reductions
and offsets are verifiable and certified in accordance with
rules promulgated by the commission: Provided, however,
That the commission has previously approved the greenhouse
gas emission reduction and offset project for credit in
accordance with section six of this article.

(2) The commission shall consult and coordinate with
the Secretary of the Department of Environmental Protection
to verify and certify greenhouse gas emission reduction or
offset projects. The Secretary of the Department of
Environmental Protection shall provide assistance and
information to the Public Service Commission and may enter
into interagency agreements with the commission to
effectuate the purposes of this subsection.

(3) Notwithstanding the provisions of this subsection, an
electric utility may not be awarded credits for a greenhouse
gas emission reduction or offset project undertaken pursuant
to any obligation under any other state law, policy or
regulation.

(e) Credits for certain energy efficiency and demand-
side energy initiative projects. --

(1) The commission may award credits to an electric
utility for investments in energy efficiency and demand-side
energy initiative projects. For each megawatt hour of electricity conserved as a result of an approved energy efficiency or demand-side energy initiative project, the commission shall award one credit: Provided, That the amount of electricity claimed to be conserved is verifiable and certified in accordance with rules promulgated by the commission: Provided, however, That the commission has approved the energy efficiency or demand-side energy initiative project for credit in accordance with section six of this article.

(2) Notwithstanding the provisions of this subsection, an electric utility may not be awarded credit for an energy efficiency or demand-side energy initiative project undertaken pursuant to any obligation under any other state or federal law, policy or regulation.

§24-2F-5. Alternative and renewable energy portfolio standard; compliance assessments.

(a) General rule. -- Each electric utility doing business in this state shall be required to meet the alternative and renewable energy portfolio standards set forth in this section. In order to meet these standards, an electric utility each year shall own an amount of credits equal to a certain percentage of electricity, as set forth in subsections (c) and (d) of this section, sold by the electric utility in the preceding year to retail customers in West Virginia.

(b) Counting of credits towards compliance. -- For the purpose of determining an electric utility’s compliance with the alternative and renewable energy portfolio standards set forth in subsections (c) and (d) of this section, each credit shall equal one megawatt hour of electricity sold by an electric utility in the preceding year to retail customers in West Virginia. Furthermore, a credit may not be used more than once to meet the requirements of this section. No more
than ten percent of the credits used each year to meet the compliance requirements of this section may be credits acquired from the generation or purchase of electricity generated from natural gas.

(c) *Twenty-five percent by 2025.* -- On and after January 1, 2025, an electric utility shall each year own credits in an amount equal to at least twenty-five percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year.

(d) *Interim portfolio standards.* --

(1) For the period beginning January 1, 2015, and ending December 31, 2019, an electric utility shall each year own credits in an amount equal to at least ten percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year; and

(2) For the period beginning January 1, 2020, and ending December 31, 2024, an electric utility shall each year own credits in an amount equal to at least fifteen percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year.

(e) *Double-counting of credits prohibited.* -- Any portion of electricity generated from an alternative or renewable energy resource facility that is used to meet another state’s alternative energy, advanced energy, renewable energy or similar energy portfolio standard may not be used to meet the requirements of this section. An electric utility that is subject to an alternative energy, advanced energy, renewable energy or similar energy portfolio standard in any other state shall list, in the alternative and renewable energy portfolio standard compliance plan required under section six of this article, any such requirements and shall indicate how it satisfied those requirements. The electric utility shall provide
in the annual progress report required under section six of
this article any additional information required by the
commission to prevent double-counting of credits.

(f) *Carryover.* -- An electric utility may apply any credits
that are in excess of the alternative and renewable energy
portfolio standard in any given year to the requirements for
any future year portfolio standard: *Provided,* That the
electric utility determines to the satisfaction of the
commission that such credits were in excess of the portfolio
standard in a given year and that such credits have not
previously been used for compliance with a portfolio
standard.

(g) *Compliance assessments.* —

(1) On or after January 1, 2015, and each year thereafter,
the commission shall determine whether each electric utility
doing business in this state is in compliance with this section.
If, after notice and a hearing, the commission determines that
an electric utility has failed to comply with an alternative and
renewable energy portfolio standard, the commission shall
impose a compliance assessment on the electric utility which
shall equal at least the lesser of the following:

(A) Fifty dollars multiplied by the number of additional
credits that would be needed to meet an alternative and
renewable energy portfolio standard in a given year; or

(B) Two hundred percent of the average market value of
credits sold in a given year multiplied by the number of
additional credits needed to meet the alternative and
renewable energy portfolio standard for that year.

(2) Compliance assessments collected by the commission
pursuant to this subsection shall be deposited into the
Alternative and Renewable Energy Resources Research Fund
established in section eleven of this article.
(h) Force majeure. --

(1) Upon its own initiative or upon the request of an electric utility, the commission may modify the portfolio standard requirements of an electric utility in a given year or years or recommend to the Legislature that the portfolio standard requirements be eliminated if the commission determines that alternative or renewable energy resources are not reasonably available in the marketplace in sufficient quantities for the electric utility to meet the requirements of this article.

(2) In making its determination, the commission shall consider whether the electric utility made good faith efforts to acquire sufficient credits to comply with the requirements of this article. Such good faith efforts shall include, but are not limited to, banking excess credits, seeking credits through competitive solicitations and seeking to acquire credits through long-term contracts. The commission shall assess the availability of credits on the open market. The commission may also require that the electric utility solicit credits before a request for modification may be granted.

(3) If an electric utility requests a modification of its portfolio standard requirements, the commission shall make a determination as to the request within sixty days.

(4) Commission modification of an electric utility’s portfolio standard requirements shall apply only to the portfolio standard in the year or years modified by the commission. Commission modification may not automatically reduce an electric utility’s alternative and renewable energy portfolio standard requirements in future years.

(5) If the commission modifies an electric utility’s portfolio standard requirements, the commission may also
require the electric utility to acquire additional credits in subsequent years equivalent to the requirements reduced by the commission in accordance with this subsection.

(i) Termination - The provisions of this section shall have no force and effect after June 30, 2026.

§24-2F-6. Alternative and renewable energy portfolio standard compliance plan; application; approval; and progress report.

(a) On or before January 1, 2011, each electric utility subject to the provisions of this article shall prepare an alternative and renewable energy portfolio standard compliance plan and shall file an application with the commission seeking approval of such plan.

(b) A portfolio standard compliance plan shall include:

1. Statistics and information concerning the electric utility’s sales to retail customers in West Virginia during the preceding ten calendar years;

2. A calculation of the electric utility’s projected yearly sales to retail customers for the years 2011-2025;

3. A calculation of the expected number of credits required to meet the portfolio standards set forth in this article;

4. An anticipated time line for the development, purchase or procurement of credits sufficient to meet the portfolio standards set forth in this article;

5. A nonbinding estimate of the costs to comply with the portfolio standards set forth in this article;
(6) A description of any greenhouse gas emission reduction or offset projects or energy efficiency and demand-side energy initiative projects the electric utility proposes to undertake for credit in accordance with this article;

(7) A list of any requirements and a description of how the electric utility satisfied or will satisfy those requirements if an electric utility is subject to an alternative energy, advanced energy, renewable energy or similar energy portfolio standard in any other state; and

(8) Such further information as required by the commission.

(c) Upon the filing of an application for approval of a portfolio standard compliance plan, and after hearing and proper notice, the commission may, in its discretion, approve or disapprove, or approve in part or disapprove in part, the application: Provided, That the commission, after giving proper notice and receiving no protest within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and shall be given in a manner and in such form as may be prescribed by the commission.

(d) The commission shall, following proper notice and hearing, if any, render a final decision on any application filed pursuant to this section within two hundred seventy days of the filing of the application.

(e) If, and to the extent, the commission determines that a portfolio standard compliance plan has a reasonable expectation of achieving the portfolio standard requirements at a reasonable cost to electric customers in this state, the commission shall approve the plan. In establishing that the
requisite standard for approval of a portfolio standard compliance plan is met, the burden of proof shall be upon the applicant.

(f) In the event the commission disapproves of an application filed pursuant to this section, in whole or in part, the commission shall specify its reason or reasons for disapproval. Any portion of the application not approved by the commission shall be modified and resubmitted by the applicant.

(g) Either upon an application of the electric utility, a petition by a party or the commission’s own motion, a compliance plan proceeding may be reopened for the purpose of considering and making, if appropriate, alterations to the plan.

(h) Approval of the compliance plan does not eliminate the need for an electric utility to otherwise obtain required approvals, including, but not limited to, certificates to construct, consent to enter into affiliated contracts and recovery of compliance costs. Furthermore, nothing in this article shall be interpreted to alter or amend the existing power and authority of the commission.

(i) Approval of the compliance plan does not relieve an electric utility from its obligation to pay a compliance assessment pursuant to the provisions of section five of this article if it fails to comply with the portfolio standards set forth therein.

(j) Within a year of the commission’s approval of an electric utility’s compliance plan, and every year thereafter, the electric utility shall submit to the commission an annual progress report. The progress report shall include the electric utility’s sales to retail customers in West Virginia during the
previous calendar year; the amount of energy the electric utility has generated, purchased or procured from alternative or renewable energy resources; a comparison of the budgeted and actual costs as compared to the estimated cost of the portfolio standard compliance plan; any information required by the commission to prevent the double-counting of credits; and any further information required by the commission.

(k) The commission shall impose a special assessment on all electric utilities required to file a compliance plan. The assessments shall be prorated among the covered electric utilities on the basis of kilowatt hours of retail sales in West Virginia and shall be due and payable on September 1 of each year. The amount of revenue collected pursuant to this subsection may not exceed $200,000 in the first year following the effective date of this article and may not exceed $100,000 in successive years. The funds generated from the assessments shall be used exclusively to offset all reasonable direct and indirect costs incurred by the commission in administering the provisions of this article.

§24-2F-7. Cost recovery and rate incentives for electric utility investment in alternative and renewable energy resources.

(a) An electric utility shall have the right to recover the costs of complying with the alternative and renewable energy portfolio standards set forth in this article in a manner prescribed by the commission. Although the commission may approve costs that exceed the costs of current utility generation or purchased power, the electric utility has the burden to demonstrate that the costs are reasonable and represent the least cost of compliance. Notwithstanding any provision of this code to the contrary, an electric utility may not recover in rates the costs of compliance assessments imposed under this article.
Upon a finding that it is in the public interest of this state, as provided in section one, article one of this chapter, the commission may authorize incentive rate-making allowances for electric utility investment in the construction of new alternative or renewable energy resource facilities in West Virginia to encourage investments in the use and development of alternative or renewable energy resource facilities.

The commission shall determine, at such time and in such proceeding, form and manner as is considered appropriate by the commission, the extent to which any electric utility investment qualifies for the incentive rate making pursuant to this section.


(a) The commission shall adopt a rule requiring that all electric utilities provide a rebate or discount at fair value, to be determined by the commission, to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement.

(b) The commission shall also consider adopting, by rule, a requirement that all sellers of electricity to retail customers in the state, including rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in this state, offer net metering rebates or discounts to customer-generators.

(c) The commission shall institute a general investigation for the purpose of adopting rules pertaining to net metering and the interconnection of eligible electric generating facilities intended to operate in parallel with an electric utility’s system. As part of its investigation, the commission shall take into consideration rules of other states within the
applicable region of the regional transmission organization, as that term is defined in 18 C.F.R. §35.34, that manages a utility’s transmission system in any part of this state. Furthermore, the commission shall consider increasing the allowed kilowatt capacity for commercial customer-generators to an amount not to exceed five hundred kilowatts and for industrial customer-generators to an amount not to exceed two megawatts. The commission shall further consider interconnection standards for combined heat and power.

(d) The commission shall promulgate these rules within twelve months of the effective date of this article.

§24-2F-9. Interagency agreements; alternative and renewable energy resource planning assessment.

(a) Interagency agreements. -- The commission may enter into interagency agreements with the Department of Environmental Protection and the Division of Energy to carry out the responsibilities set forth in this article.

(b) Alternative and renewable energy resource planning assessment. -- The commission, in cooperation with the Department of Environmental Protection and the Division of Energy, shall conduct an ongoing alternative and renewable energy resource planning assessment for this state that shall, at a minimum: (i) Identify current and operating alternative and renewable energy resource facilities in this state; (ii) assess the potential to add future generating capacity in this state from alternative and renewable energy resource facilities; (iii) assess the conditions of the alternative and renewable energy resource marketplace, including costs associated with alternative and renewable energy; (iv) recommend methods to maintain or increase the relative competitiveness of the alternative and renewable energy
The commission shall report the initial results of its assessment to the Governor, the President of the Senate and the Speaker of the House of Delegates within three years of the effective date of this article and shall report the ongoing results of the assessment on a yearly basis thereafter, except that on or before January 1, 2012, the commission, in collaboration with the Public Energy Authority, shall report the initial results of its assessment to the Joint Committee on Government and Finance.

§24-2F-10. Portfolio requirements for rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in West Virginia; and alternative and renewable energy resource credits for nonutility generators.

(a) The commission shall consider adopting, by rule, alternative and renewable energy portfolio requirements for rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in this state. The commission shall institute a general investigation for the purpose of adopting such requirements.

(b) The commission shall consider extending, by rule, the awarding of alternative and renewable energy resource credits in accordance with the provisions of section four of this article to electric distribution companies or electric generation suppliers other than electric utilities. As part of its investigation, the commission shall examine any modifications to the statutory and regulatory structure
necessary to permit the participation of such non-utility generators in the system of tradable credits authorized by this article. If the commission determines that statutory modifications to this article or other provisions of this code are necessary to permit such participation, the commission shall notify the Governor and the Legislature of the findings of its investigation and proposed legislation necessary to effectuate its recommendations.

§24-2F-11. Alternative and renewable energy resources grant program.

(a) There is hereby established in the State Treasury a special revolving fund to be jointly administered by the Public Service Commission and the Division of Energy which shall be designated the “Alternative and Renewable Energy Resources Research Fund.” Moneys in the fund shall be used to award matching grants for demonstration, commercialization, research and development projects relating to alternative and renewable energy resources and energy efficiency technologies.

(b) The fund shall consist of any moneys appropriated by the Legislature, any compliance assessments collected by the commission, any gifts, bequests or other contributions to the fund from private entities or electric customers and any interest or other return on the moneys in the fund. Any moneys remaining in the account at the end of a fiscal year, including accrued interest, do not revert to the General Revenue Fund and remain in the account.

(c) Any donations to the fund collected by an electric generation supplier or electric distribution company shall be forwarded to the Public Service Commission and the commission shall deposit such moneys in the fund.
(d) The Division of Energy shall provide for the distribution of moneys from the fund in the form of matching grants to state institutions of higher education for demonstration, commercialization, research and development projects relating to alternative and renewable energy resources and energy efficiency technologies. The Division of Energy shall consult with and receive recommendations from the Public Energy Authority, the Economic Development Authority and the Department of Environmental Protection to establish eligibility criteria for the awarding of grant moneys under this section. The Division of Energy may update said criteria as necessary to comply with the requirements of this section.

(e) Within two years of the effective date of this section, and each year thereafter, the Division of Energy shall file a report with the Governor, the President of the Senate and the Speaker of the House of Delegates containing, at a minimum: (i) A description of all actions taken by the Division of Energy pursuant to this section; (ii) an accounting of total deposits into and expenditures from the fund during the previous twelve months; and (iii) a description of any projects that received a distribution from the fund during the preceding twelve months, including the projects’ objectives, current status and results, if any.

§24-2F-12. Rule-making authority.

The commission shall promulgate rules in accordance with section seven, article one, chapter twenty-four of this code to effectuate the purposes of this article.
AN ACT to amend and reenact §29-22C-27 of the Code of West Virginia, 1931, as amended, relating to the allocation of adjusted gross receipts from pari-mutuel racetracks with West Virginia Lottery racetrack table games; increasing the share allocated to certain municipalities and counties after each pari-mutuel racetrack in the state is licensed to offer West Virginia Lottery racetrack table games; providing a corresponding adjustment of funds transferred to the state; providing for the allocation of funds in growth counties that have enacted the Local Powers Act; and increasing for two fiscal years the share allocated to the Lottery Commission for administration and enforcement upon the occurrence of certain conditions.

Be it enacted by the Legislature of West Virginia:

That §29-22C-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.
(a)(1) The special fund in the State Treasury known as the West Virginia Lottery Racetrack Table Games Fund is continued and all tax collected under this article shall be deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table Games Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund.

(2) Notwithstanding any provision of this article to the contrary, all racetrack table games license fees received by the commission pursuant to section eight of this article shall be deposited into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature solely for the purpose of enabling the aged and disabled citizens of this state to maintain their residency in the community-based setting through the provision of home and community-based services.

(b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to subsection (a) of this section, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection (e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the amount being divided equally between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with
West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensees for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The one percent transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county’s racetrack: Provided, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;
(5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the amounts transferred under this subdivision shall be allocated to the municipalities within each county having a racetrack table games licensee, based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality’s population determined at the most recent United States decennial census of population: Provided, That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section; and

(B) One half of the amounts transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, having a racetrack table games licensee based on each municipality’s population determined at the most recent United States decennial census of population: Provided, That: (i) A municipality which received funds above its pro rata share pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this paragraph; (ii) for each allocation, when
a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph: Provided, however, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: Provided, That distribution under this subdivision may not be made to any municipality which did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: Provided, however, That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article, subsection (b) of this section shall be superseded and replaced by this subsection for distribution of the balances in the fund established by
subsection (a) of this section. From the gross amounts deposited into the fund, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection(e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery
section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive one half of that county’s share of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements; 

(5) Transfer three percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the money transferred by this subdivision shall be allocated to the municipalities within each county, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality’s population determined at the most recent United States decennial census of population: Provided, That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the
209 county in which the municipality is located; and (iii) a
210 municipality receiving moneys under this paragraph may not
211 receive an amount which is less than that received by a
212 municipality under provisions of subdivision (4), subsection
213 (d) of this section.

214 (B) One half of the money transferred under this
215 subdivision shall be allocated pro rata to the municipalities
216 within all the counties, other than a county described in
217 paragraph (C) of this subdivision, having a racetrack table
218 games licensee based on each municipality’s population
determined at the most recent United States decennial census
of population: Provided, That: (i) A municipality which
221 received funds above its pro rata share pursuant to
222 subparagraph (iii), paragraph (A) of this subdivision shall not
223 receive an allocation under this paragraph; (ii) for each
224 allocation, when a municipality is physically located in two or
225 more counties, only that portion of its population residing in
226 the county where the authorized table games are located shall
227 be considered; and (iii) a single municipality in a county where
228 West Virginia Lottery racetrack games are played may not
229 receive a total share under this paragraph that is in excess of
230 twenty-five percent of the total transfers under this paragraph.

231 (C) Notwithstanding the provisions of paragraphs (A)
232 and (B) of this subdivision, when a racetrack is located in a
233 growth county, as that term is defined in section three, article
234 twenty, chapter seven of this code, which has enacted the
235 Local Powers Act, and in which county a racetrack is located
236 that has participated in the West Virginia Thoroughbred
237 Development Fund since on or before January 1, 1991, the
238 county board of education shall receive two thirds of the
239 share of adjusted gross receipts from West Virginia Lottery
240 table games from the racetrack in the county as provided in
241 this subdivision and the municipalities within the county
242 shall share the remaining one third of the total amount
243 allocated as provided in this paragraph. The municipal one-
244 third share shall be divided pro rata among the municipalities
based on each municipality's population determined at the
most recent United States decennial census of population.
All money transferred under this paragraph shall be used by
the county board of education and by the municipalities for
the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross
receipts to the governing bodies of municipalities in which a
racetrack table games licensee is located. The municipalities
shall each receive an equal share of the total amount
allocated under this subdivision: Provided, That distribution
under this subdivision may not be made to any municipality
that did not have a licensed racetrack within its municipal
boundaries as they existed on January 1, 2007: Provided,
however, That if no racetrack table games licensee is located
within a municipality, a transfer may not be made under this
subdivision; and

(7) Distribute the remaining amounts, hereinafter referred
to as the net amounts in the Racetrack Table Games Funds,
in accordance with the provisions of subsection (d) of this
section.

(d) From the net amounts in the Racetrack Table Games
Fund, the commission shall:

(1) Transfer seventy-six percent to the state Debt
Reduction Fund which is hereby continued in the State
Treasury. Moneys of the fund shall be expended solely for
the purpose of accelerating the reduction of existing
unfunded liabilities and existing bond indebtedness of the
state and shall be expended or transferred only upon
appropriation of the Legislature;

(2) Transfer four percent, divided pro rata based on
relative adjusted gross receipts from the individual licensed
racetracks for and on behalf of all employees of each licensed
racing association, into a special fund to be established by the
Racing Commission to be used for payment into the pension plan for all employees of each licensed racing association;

(3) Transfer ten percent, to be divided and paid in equal shares, to each county commission in the state that is not eligible to receive a distribution under subdivision (4), subsection (b) of this section: Provided, That funds transferred to county commissions under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements; and

(4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6), subsection (b) of this section: Provided, That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements.

(e) All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-enforcement agencies for services performed at the request of the commission pursuant to this article. The commission’s expenses associated with a particular racetrack with authorized table games under this article may not exceed three percent of the total annual adjusted gross receipts received from that licensee’s operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee’s operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. However, for the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article and for the fiscal year thereafter, the commission’s expenses associated with a particular racetrack with authorized table games under this article may not exceed
four percent of the total annual adjusted gross receipts received from that licensee’s operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee’s operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the commission shall transfer at least $100,000 but not more than $500,000 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a of this chapter.

CHAPTER 11

(S.B. 1003 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed June 2, 2009; in effect July 1, 2009.]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6J-1, §11-6J-2, §11-6J-3, §11-6J-4, §11-6J-5, §11-6J-6 and §11-6J-7; and to
amend and reenact §11-15-8d and §11-15-9h of said code, all relating to establishing the High-Technology Business Property Valuation Act; defining terms; providing mandated salvage valuation of certain high-technology and internet advertising businesses’ property; specifying method for valuation of certain property; providing for initial determination by county assessors of whether certain property is used in a high-technology business or an internet advertising business; specifying procedure for protest and appeal of determination by county assessor; requiring the West Virginia Development Office to report to the Joint Committee on Government and Finance on the economic impact of such valuation beginning in 2013; providing exceptions to limitations on right to assert exemptions; exempting certain items from consumers sales and service tax; specifying effective dates; and requiring reports to the Legislature.

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 §11-61-1, §11-61-2, §11-61-3, §11-61-4, §11-61-5, §11-61-6 and §11-61-7; and that §11-15-8d and §11-15-9h of said code be amended and reenacted, all to read as follows:

ARTICLE 6J. SPECIAL METHOD FOR VALUATION OF CERTAIN HIGH-TECHNOLOGY PROPERTY.

§11-6J-1. Short title.
§11-6J-2. Definitions.
§11-6J-3. Valuation of certain specialized high-technology property.
§11-6J-4. Initial determination by county assessor.
§11-6J-5. Protest and appeal.
§11-6J-6. Effective date.
§11-6J-1. Short title.

This article shall be known and cited as the High-Technology Business Property Valuation Act.

§11-6J-2. Definitions.

For the purposes of this article:

(1) "Network" means a group of two or more computer systems linked together;

(2) "Salvage value" means five percent of original cost; and

(3) "Server" means a computer or device on a network that manages network resources.

§11-6J-3. Valuation of certain specialized high-technology property.

Notwithstanding any other provision of this code to the contrary, the value of servers directly used in a high-technology business or in an internet advertising business, as defined in section nine-h, article fifteen of this chapter, and the value of tangible personal property directly used in a high-technology business or in an internet advertising business, as defined in said section, for the purpose of ad valorem property taxation under this chapter and under article X of the constitution of this state, shall be its salvage value.

§11-6J-4. Initial determination by county assessor.

The assessor of the county in which a server or specific item of tangible personal property is located shall determine, in writing, whether that server or specific item of tangible personal property is directly used in a high-technology business or an internet advertising business subject to valuation in accordance with this article. Upon making a determination that a taxpayer has a server or tangible personal property directly used in a high-technology business...
or an internet advertising business, the county assessor shall
notify the Tax Commissioner of that determination and shall
provide information to the Tax Commissioner as he or she
requires relating to that determination.

§11-6J-5. Protest and appeal.

At any time after the property is returned for taxation, but
prior to January 1 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 property directly used in a high-technology
business or an internet advertising business under this article
which should be subject to valuation in accordance with this
article. If the taxpayer believes that some portion of the
taxpayer’s property is subject to this article, the taxpayer
shall 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 January 1 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 any other information which
the Tax Commissioner may require.

The Tax Commissioner shall, as soon as possible on
receipt of the question, but in no case later than February 28
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
32 this chapter. The Tax Commissioner shall prescribe forms on
33 which the questions under this section shall be certified and
34 the Tax Commissioner has the authority to pursue any
35 inquiry and procure any information necessary for
36 disposition of the matter.

§11-6J-6. Effective date.

1 This article shall be effective on and after July 1, 2009.


1 The West Virginia Development Office shall provide to
2 the Joint Committee on Government and Finance by March
3 1, 2013, and on March 1 of each of the two subsequent years,
4 a report detailing the economic benefit of the valuation
5 method specified in this article. The report shall include the
6 number of new jobs created due to the provisions of this
7 article and the ad valorem property tax impact.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-Sd. Limitations on right to assert exemptions.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into
manufactured products; certain leases; sales of electronic data processing service;
sales of computer hardware and software directly used in communication; sales
of educational software; sales of internet advertising; sales of high-technology
business services directly used in fulfillment of a government contract; sales of
tangible personal property for direct use in a high-technology business or internet
advertising business; definitions.

§11-15-8d. Limitations on right to assert exemptions.

1 (a) Persons who perform “contracting” as defined in
2 section two of this article, or persons acting in an agency
3 capacity, may not assert any exemption to which the
4 purchaser of such contracting services or the principal is
5 entitled. Any statutory exemption to which a taxpayer may
6 be entitled shall be invalid unless the tangible personal
7 property or taxable service is actually purchased by such
8 taxpayer and is directly invoiced to and paid by such
9 taxpayer. This section shall not apply to purchases by an
employee for his or her employer; purchases by a partner for
his or her partnership; or purchases by a duly authorized
officer of a corporation, or unincorporated organization, for
his or her corporation or unincorporated organization so long
as the purchase is invoiced to and paid by the employer,
partnership, corporation or unincorporated organization.

(b) **Transition rule.** -- This section shall not apply to
purchases of tangible personal property or taxable services in
fulfillment of a purchasing agent or procurement agent
contract executed and legally binding on the parties thereto
prior to September 15, 1999: Provided, That this transition
rule shall not apply to any purchases of tangible personal
property or taxable services made under such a contract after
August 31, 1991; and this transition rule shall not apply if the
primary purpose of the purchasing agent or procurement
agent contract was to avoid payment of consumers sales and
use taxes. However, effective July 1, 2007, this section shall
not apply to purchases of services, machinery, supplies or
materials, except gasoline and special fuel, to be directly used
or consumed in the construction, alteration, repair or
improvement of a new or existing building or structure by a
person performing "contracting", as defined in section two of
this article, if the purchaser of the "contracting" services
would be entitled to claim the refundable exemption under
subdivision (2), subsection (b), section nine of this article had
it purchased the services, machinery, supplies or materials.
Effective July 1, 2009, this section shall not apply to
purchases of services, computers, servers, building materials
and tangible personal property, except purchases of gasoline
and special fuel, to be installed into a building or facility or
directly used or consumed in the construction, alteration,
repair or improvement of a new or existing building or
structure by a person performing "contracting", as defined in
section two of this article, if the purchaser of the
"contracting" services would be entitled to claim the
exemption under subdivision (7), subsection (a), section
nine-h of this article.
§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or internet advertising business; definitions.

(a) In order to modernize the exemptions from tax contained in this article as a result of technological advances in computers and the expanded role of computers, the internet and global instant communications in business and to encourage computer software developers, computer hardware designers, systems engineering firms, electronic data processing companies and other high-technology companies to locate and expand their businesses in West Virginia, the following sales of tangible personal property and software are exempt:

(1) Sales of computer hardware or software (including custom designed software) to be directly incorporated by a manufacturer into a manufactured product. For purposes of this subsection, the payment of licensing fees for the right to incorporate hardware or software developed by persons other than the manufacturer into a manufactured product is exempt from the tax imposed by this article;

(2) Sales of computer hardware or software (including custom designed software) directly used in communication as defined in this article;

(3) Sales of electronic data processing services;

(4) Sales of educational software required to be used in any of the public schools of this state or in any institution in
(5) Sales of internet advertising of goods and services;

(6) Sales of high-technology business services to high-technology businesses which enter into contracts with this state, its institutions and subdivisions, governmental units, institutions or subdivisions of other states, or with the United States, including agencies of federal, state or local governments for direct use in fulfilling the government contract; and

(7) Sales of prewritten computer software, computers, computer hardware, servers and building materials and tangible personal property to be installed into a building or facility for direct use in a high-technology business or an internet advertising business.

(b) Definitions. --

As used in this article, the following terms have the following meanings:

(1) “Computer hardware” means a computer, as defined in article fifteen-b of this chapter, and the directly and immediately connected physical equipment involved in the performance of data processing or communications functions, including data input, data output, data processing, data storage, and data communication apparatus that is directly and immediately connected to the computer. The term “computer hardware” does not include computer software.

(2) “High-technology business” means and is limited to businesses primarily engaged in the following activities: Computer hardware design and development; computer
software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; design and development of new manufactured products which incorporate computer hardware and software; electronic data processing; network management, maintenance, engineering, administration and security services; website management, maintenance, engineering, administration and security services and computer systems management, maintenance, engineering, administration and security services. High-technology business as defined herein is intended to include businesses which engage in the activities enumerated in this definition as their primary business activity, and not as a secondary or incidental activity and not as an activity in support of or incidental to business activity not specifically enumerated in this definition.

(3) “High-technology business services” means and is limited to computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; electronic data processing; computer systems management; computer systems maintenance; computer systems engineering; computer systems administration and computer systems security services.

(4) “Internet advertising business” means a for-profit business that is engaged, for monetary remuneration, in the primary business activity of announcing, or calling public attention to, goods or services in order to induce the public to purchase those goods or services, and which uses the internet as its sole advertising communications medium. For purposes of this definition, internet advertising must be the primary business activity of the business and not a secondary or incidental activity and not an activity in support of or incidental to other business activity.
(5) "Network" means a group of two or more computer systems linked together.

(6) "Server" means a computer or device on a network that manages network resources.

(c) The amendments to this section made in the first extraordinary session of the Legislature in 2009 shall apply to purchases made on and after July 1, 2009.

CHAPTER 12

(S.B. 1002 - By Senator Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 2, 2009; in effect ninety days from passage]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-5-4a, all relating to salary enhancements for health care personnel at certain hospitals; establishing legislative findings; requiring the Division of Personnel and the Department of Health and Human Resources to develop pay rates and requirements for certain classified service positions at Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital; authorizing the Department of Health and Human Resources to provide funding from legislative appropriations; exempting pay rates and employment requirements from grievance procedures; and declaring that the provisions do not give rise to any private cause of action.

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 §5-5-4a, to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4a. Psychiatrists, nurses and aides classifications.

(a) The Legislature finds that Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital have extreme difficulty in recruiting and retaining physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, health service associates and other employees who assist in the direct provision of medical care to patients in those facilities.

(b) The West Virginia Division of Personnel and the Department of Health and Human Resources jointly shall develop pay rates and employment requirements to support the recruitment and retention of physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, health service associates or other positions at Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital. Pay rates shall reflect the regional market rates for relevant positions. The pay rates and employment requirements shall be put into effect by July 1, 2009.

(c) Funding for the pay rates and employment requirements shall be provided from the appropriation to the Department of Health and Human Resources. Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of article two, chapter six-c of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.
AN ACT to amend and reenact §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-3-10 of said code, all relating to ensuring the post-mine development of reclaimed surface mine property; defining certain terms; requiring certain counties to develop master land use plans for post-mine development; clarifying procedures relating to master land use plans and community impact statements; enhancing certain powers and responsibilities of the Office of Coalfield Community Development and the Department of Environmental Protection with respect to master land use plans; requiring surface mine reclamation plans to comport with approved master land use plans; and authorizing surface mine reclamation plans to contain alternative, noncomporting post-mining land uses under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-3-10 of said code be amended and reenacted, all to read as follows:
22. Environmental Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-3. Definitions.

§5B-2A-3. Definitions.

(a) For the purpose of this article, the following terms have the meanings ascribed to them:

(1) "Department" means the Department of Environmental Protection established in article one, chapter twenty-two of this code;

(2) "Office" means the Office of Coalfield Community Development;

(3) "Operator" means the definition in section three, article three, chapter twenty-two of this code; and

(4) "Renewable and alternative energy" means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, solar energy, wind power, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources.
(b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.


The office has and may exercise the following duties, powers and responsibilities:

1. To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;

2. To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in section eight of this article and to administer the procedure so established;

3. To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in section nine of this article and to administer the procedure so established;

4. To establish a procedure to develop action reports and annual updates as provided in section ten of this article and to administer the procedure so established;

5. To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

6. To establish a procedure to assist property owners in the sale of their property as provided in section eleven of this article and to administer the procedure so established;

7. In conjunction with the department, to maintain and operate a system to receive and address questions, concerns and complaints relating to surface mining; and
(8) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master land use plan pursuant to the provisions of section nine of this article.


(a)(1) The operator shall develop a community impact statement, as described in this section, which shall be submitted to the office within sixty days of the filing of a surface mining application pursuant to the provisions of article three, chapter twenty-two of this code. Failure to submit a community impact statement to the office shall be considered a violation under the provisions of section seventeen of said article; and

(2) The operator shall provide copies of the community impact statement to the department’s Office of Mining Reclamation and Office of Explosives and Blasting and to the county commissions, county clerks’ offices and local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations.

(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:

(1) The amount and location of land to be mined or used in the actual mining operations;

(2) The expected duration of the mining operations in each area of the community;

(3) The extent of anticipated mining-related property acquisitions, to the extent that such acquisitions are known or knowable;
(4) The intentions of the surface and mineral owners relative to the acquired property, to the extent that such intentions are known or knowable;

(5) A statement of the post-mining land use for all land within the permit boundary;

(6) The intended blasting plan and the expected time and duration it will affect each community;

(7) Information concerning the extent and nature of valley fills and the watersheds to be affected;

(8) Economic information, such as the number of jobs created and annual coal production resulting from the surface mining operation, the anticipated life of the mining operation and such other information as may be deemed appropriate;

(9) An acknowledgment of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure components needed to accomplish the designated post-mine land use required by the plan.

(c) Where the operator makes any significant revision to the permit application under section eighteen, article three, chapter twenty-two of this code, which revision substantially affects any of the information provided in subsection (b) of this section, the operator shall revise the affected provisions of its community impact statement and shall submit such revisions as set forth in subsection (a) of this section.

(d) Within thirty days of receipt of a community impact statement pursuant to subdivision (2), subsection (a) of this section or a revised community impact statement pursuant to subsection (c) of this section, the local, county or regional
development or redevelopment authorities of the areas to be
affected by the surface mining operations shall provide a
written acknowledgment of the receipt of this community
impact statement or revised community impact statement to
the department’s Division of Mining Reclamation, to the
county commission or county commissions and to the office.

(e) The provisions of this section shall apply as follows:

(1) To all surface mining permits granted after June 11,
1999; and

(2) At the first renewal date of all previously issued
permits: Provided, That the permittee shall be afforded ninety
days from said date to comply with the provisions of this
section.


(a) The office shall determine the land and infrastructure
needs in the general area of the surface mining operations.

(b) For the purposes of this section, the term “general
area” shall mean the county or counties in which the mining
operations are being conducted or any adjacent county.

(c) To assist the office the operator shall be required to
prepare and submit to the office the information set forth in
this subsection as follows:

(1) A map of the area for which a permit under article
three, chapter twenty-two of this code is being sought or has
been obtained;

(2) The names of the surface and mineral owners of the
property to be mined pursuant to the permit; and
(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature and cost to develop and maintain the community assets identified in section eight of this article; and

(6) The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a development office or county through the preparation of a master land use plan for inclusion into a
reclamation plan prepared pursuant to the provisions of section ten, article three, chapter twenty-two of this code. No provision of this section may be construed to modify requirements of article three of said chapter.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses. A county commission or other governing body of a county may designate a local, county or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period;

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan;

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010;

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for
review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article;

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article;

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval;

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: (i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or development or redevelopment authority’s anticipated need and market use; (iii) the property has in place necessary infrastructure
components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with section twenty-three, article three, chapter twenty-two of this code; and (vi) the use is feasible. Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period;

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to paragraph (C), subdivision (1), subsection (c), section twenty-three, article three, chapter twenty-two of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment or planning agencies.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(1) The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the
time of the application and, if the land has a history of
previous mining, the uses which preceded any mining; (B)
the capability of the land prior to any mining to support a
variety of uses, giving consideration to soil and foundation
characteristics, topography and vegetation cover and, if
applicable, a soil survey prepared pursuant to subdivision
(15), subsection (a), section nine of this article; and (C) the
best information available on the productivity of the land
prior to mining, including appropriate classification as prime
farmlands and the average yield of food, fiber, forage or
wood products from the lands obtained under high levels of
management;

(3) The use which is proposed to be made of the land
following reclamation, including a discussion of the utility
and capacity of the reclaimed land to support a variety of
alternative uses, including, but not limited to, renewable and
alternative energy uses, residential uses, highway uses,
industrial uses, commercial uses, agricultural uses, public
facility uses or recreational facility uses, and the relationship
of the use to existing land use policies and plans and the
comments of any owner of the surface, other state agencies
and local governments which would have to initiate,
implement, approve or authorize the proposed use of the land
following reclamation;

(A) The post-mining land use proposed in any
reclamation plan for lands proposed to be mined by surface
mining methods shall comport with the land use that is
specified in the approved master land use plan for the area as
provided in section nine, article two-a, chapter five-b of this
code: Provided, That the secretary may approve an
alternative post-mining land use where the applicant
demonstrates that:

(i) The proposed post-mining land use is a higher and
better use than the land use specified in the approved master
land use plan;
(ii) Site-specific conditions make attainment of a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area impractical; or

(iii) The post-mining land use specified in the approved master land use plan would substantially interfere with the future extraction of a mineable coal bed, as that term is defined in rules promulgated by the Tax Commissioner relating to the valuation of active or reserve coal property for ad valorem property tax purposes, 110 C. S. R. 11-3 or a successor rule, from the land to be mined.

(B) Existing permits with approved reclamation plans may be modified by the operator through an appropriate permit revision to include a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area as provided in section nine, article two-a, chapter five-b of this code;

(C) By complying with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code, a post-mining land use satisfies the requirements for an alternative post-mining land use and satisfies the variance requirements set forth in subsection (c), section thirteen, article three, chapter twenty-two of this code if applicable to the proposed use;

(4) A detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for
backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section thirteen of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section thirteen or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on the interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface mining and reclamation process to assure the protection of:

(A) The quality of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation;
(B) The rights of present users to the water; and

(C) The quantity of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation or to provide alternative sources of water where the protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has made at the area to be covered by the permit or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties, including acid-forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding the mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Any other requirements as the director may prescribe by rule.

(b) A reclamation plan pending approval as of the effective date of this section may be amended by the operator to provide for a post-mining land use that comports with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code.

(c) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.
(d) The amendments to this section by the first extraordinary session of the Legislature in 2009 are effective upon the approval of the corresponding amendments to West Virginia's state program, as that term is defined in the federal Surface Mining Control and Reclamation Act of 1977, 30 U. S. C. §1291, by the federal Office of Surface Mining Reclamation and Enforcement.

CHAPTER 14

(H.B. 113 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed June 2, 2009; in effect from passage]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend and reenact §31-15-6 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31-15-16a; to amend and reenact §18B-10-8 of said code; and to amend and reenact §29-22-18 of said code, all relating to providing funding for institutions of higher education, state parks, the state capitol complex, other state facilities or tourism sites; authorizing the Economic Development Authority to issue and refund revenue bonds from time to time for capital improvement projects; providing for bond amounts and maturity; allocating bond proceeds; establishing procedures for project selection; providing for the allocation of lottery revenues for the bond debt payments; and authorizing the use of moneys in the Community and Technical College Capital Improvement Fund for capital improvements and capital projects.
Be it enacted by the Legislature of West Virginia:

That §31-15-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §31-15-16a; that §18B-10-8 of said code be amended and reenacted; and that §29-22-18 of said code be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

1 The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:
2 (a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.
3 (b) To determine, upon the proper application of an industrial development agency or an enterprise, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency or enterprise of a project in this state.
4 (c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at
(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.

(f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits and issue subpoenas.

(g) To financially assist projects by insuring obligations in the manner provided in this article through the use of the insurance fund.

(h) To finance any projects by making loans to industrial development agencies or enterprises upon such terms as the authority shall deem appropriate: Provided, That nothing contained in this subsection (h) or under any other provision in this article shall be construed as permitting the authority to make loans for working capital: Provided, however, That nothing contained in this article shall be construed as prohibiting the authority from insuring loans for working capital made to industrial development agencies or to enterprises by financial institutions: Provided further, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to refinance existing debt except when such refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs.
(i) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the payment of such bonds or notes, all as hereinafter provided.

(j) To issue and deliver revenue bonds or notes in exchange for a project.

(k) To borrow money for its purposes and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for loans, and the authority may issue and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in this article.

(l) To maintain such sinking funds and reserves as the board shall determine appropriate for the purposes of meeting future monetary obligations and needs of the authority.

(m) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(n) To adopt, use and alter at will a corporate seal.

(o) To make, amend, repeal and adopt both bylaws and rules and regulations for the management and regulation of its affairs.

(p) To appoint officers, agents and employees and to contract for and engage the services of consultants.

(q) To make contracts of every kind and nature to execute all instruments necessary or convenient for carrying on its business.
(r) To accept grants and loans from and enter into contracts and other transactions with any federal agency.

(s) To take title by conveyance or foreclosure to any project where acquisition is necessary to protect any loan previously made by the authority and to sell, by public or private sale, transfer, lease or convey such project to any enterprise.

(t) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(u) To acquire, construct, maintain, improve, repair, replace and operate projects within this state, as well as streets, roads, alleys, sidewalks, crosswalks and other means of ingress and egress to and from projects located within this state.

(v) To acquire, construct, maintain, improve, repair and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage treatment and disposal facilities and any combinations thereof for the use and benefit of any enterprise located within this state.
(w) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses and any and all other property, property rights and appurtenances for the use and benefit of any enterprise located within this state.

(x) To acquire, by purchase, lease, donation or eminent domain, any real or personal property, or any right or interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights and interests acquired by the authority shall be taken in the name of the authority.

(y) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured and whether or not the authority originally issued the bonds or notes to be refunded.

(z) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds or notes to the purchase, redemption or payment of the notes, security interests or bonds or notes to be refunded.

(aa) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(bb) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interests, note or
contract or agreement of any kind to which the authority is a party.

(cc) To sell loans, security interests or other obligations in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of loans, security interests, or other obligations may be used in the same manner and for the same purposes as bond and note revenues.

(dd) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the authority deems desirable.

(ee) To sell, license, lease, mortgage, assign, pledge or donate its property, both real and personal, or any right or interest therein to another or authorize the possession, occupancy or use of such property or any right or interest therein by another, in such manner and upon such terms as it deems appropriate.

(ff) To participate with the state and federal agencies in efforts to promote the expansion of commercial and industrial development in this state.

(gg) To finance, organize, conduct, sponsor, participate and assist in the conduct of special institutes, conferences, demonstrations and studies relating to the stimulation and formation of business, industry and trade endeavors.

(hh) To conduct, finance and participate in technological, business, financial and other studies related to business and economic development.

(ii) To conduct, sponsor, finance, participate and assist in the preparation of business plans, financing plans and other proposals of new or established businesses suitable for support by the authority.
(jj) To prepare, publish and distribute, with or without charge as the authority may determine, such technical studies, reports, bulletins and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information.

(kk) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

(ll) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state.

(mm) To contract for the provision of legal services by private counsel, and notwithstanding the provisions of article three, chapter five, such counsel may, but is not limited to, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating thereto, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority.

(nn) To develop, maintain, operate and apply for the establishment of foreign trade zones pursuant to and in accordance with all applicable provisions of federal law.

(oo) To exercise the powers and responsibilities previously vested in the state building commission by section eleven-a, article six, chapter five including, but not limited to, the authority to refund bonds issued in accordance with that section.

§31-15-16a. Bonds for capital improvements at institutions of higher education, state parks, the state capitol complex, other state facilities or tourism sites; limitations; authority to issue revenue bonds; use of funds to pay for projects.
(a)(1) The economic development authority shall, in accordance with the provisions of this article, issue revenue bonds from time to time, to pay for a portion of the cost of constructing, equipping, improving or maintaining capital improvement projects under this section or to refund the bonds, at the discretion of the authority. The principal amount of the bonds issued under this section shall not exceed, in the aggregate, $150 million. Any revenue bonds issued on or after the effective date of this section which are secured by lottery proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the “Education, Arts, Sciences and Tourism Debt Service Fund” established in section eleven-a, article six, chapter five and continued by this section.

(2) All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The authority may further provide in the trust agreement for priorities on the revenues paid into the Education, Arts, Sciences and Tourism Debt Service Fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section or section eleven-a, article six, chapter five of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of section eleven-a, article six, chapter five of this code. The Education, Arts, Sciences and Tourism Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section and section eleven-a, article six, chapter five of this code. On or prior to May 1 of each year, commencing May 1, 2010, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued
pursuant to this section, and for which moneys deposited in
the Education, Arts, Sciences and Tourism Debt Service
Fund have been pledged, or will be pledged, for repayment
pursuant to this section.

(3) After the authority has issued bonds authorized by
this section, and after the requirements of all funds have been
satisfied, including coverage and reserve funds established in
connection with the bonds issued pursuant to this section, any
balance remaining in the Education, Arts, Sciences and
Tourism Debt Service Fund may be used for the redemption
of any of the outstanding bonds issued under this section
which, by their terms, are then redeemable or for the
purchase of the outstanding bonds at the market price, but not
to exceed the price, if any, at which redeemable, and all
bonds redeemed or purchased shall be immediately canceled
and shall not again be issued.

(b) The authority shall expend sixty percent of the bond
proceeds, net of issuance costs, reserve funds and refunding
costs, for certified capital improvement projects at state
institutions of higher education. The Higher Education
Policy Commission shall submit a proposed list of projects
which will receive funds from the bond proceeds to the
Governor on or before January 1, 2010. Thereafter, the
Governor shall certify to the authority on or before February
1, 2010, a list of those capital improvement projects at state
institutions of higher education which will receive funds
from the proceeds of bonds issued pursuant to this section.
Once certified, the list may not thereafter be altered or
amended other than by legislative enactment.

(c) The authority shall expend the balance of the bond
proceeds for certified projects at state parks, the capitol
complex, other state facilities or tourism sites. The secretary
of the department of administration, the director of the
division of natural resources, the director of the West
Virginia development office and a representative of the
capitol building commission, other than the secretary of the 
department of administration, who shall be selected by the 
capitol building commission shall submit a proposed list of 
projects which will receive funds from the bond proceeds to 
the Governor on or before January 1, 2010. Thereafter, the 
Governor shall certify to the authority on or before February 
1, 2010, a list of those capital improvement projects at state 
parks, the state capitol complex, other state facilities or 
tourism sites which will receive funds from the proceeds of 
bonds issued pursuant to this section. Once certified, the list 
may not thereafter be altered or amended other than by 
legislative enactment.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED 
at state institutions of higher 
education.

§18B-10-8. Collection; disposition and use of capital and 
auxiliary capital fees; creation of special capital 
and auxiliary capital improvements funds; 
revenue bonds.

(a) This section and any rules adopted by the 
commission, council or both, in accordance with this section 
and article three-a, chapter twenty-nine-a of this code, 
governs the collection, disposition and use of the capital and 
auxiliary capital fees authorized by section one of this article. 
The statutory provisions governing collection and disposition 
of capital funds in place prior to the enactment of this section 
remain in effect.

(b) Fees for full-time students. -- The governing boards 
shall fix capital and auxiliary capital fees for full-time 
students at each state institution of higher education per 
semester. For institutions under its jurisdiction, a governing 
board may fix the fees at higher rates for students who are 
not residents of this state.
(c) Fees for part-time students. -- For all part-time students and for all summer school students, the governing boards shall impose and collect the fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is continued in the State Treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from the students pursuant to section one of this article. The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which the fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest in land;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;
The acquisition of furnishings and equipment for the buildings; and

The construction or acquisition of any other capital improvements or capital education facilities at the state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.

The governing boards, in their discretion, may use the moneys in the special capital improvements funds and special auxiliary improvement funds to finance the costs of the purposes set forth in this section on a cash basis. The commission, when singly or jointly requested by the governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds shall be a prior and superior charge on the special funds over the use of any of the moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any expenditures from the special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in the order of priority agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the Governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure.
(g) The revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefrom from the moneys in the special funds.

(h) The issuance of the revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have the other terms and provisions determined by the governing board receiving the proceeds and the commission. The revenue bonds shall be signed by the Governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance thereof, under the Great Seal of the State, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the commission or governing board determines is for the best interests of the state.

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

(j) After the issuance of any revenue bonds, the fees at the state institutions of higher education pledged to the payment thereof may not be reduced as long as any of the revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued. The revenue bonds are and constitute negotiable instruments under the Uniform Commercial Code of this state; together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the revenue bonds may not be considered to be obligations or debts of the state and the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(k) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. There is hereby created in the State Treasury
a special revenue fund known as the Community and
Technical College Capital Improvement Fund into which
shall be deposited the amounts specified in subsection (j),
section eighteen, article twenty-two, chapter twenty-nine of
this code. All amounts deposited in the fund shall be pledged
to the repayment of the principal, interest and redemption
premium, if any, on any revenue bonds or refunding revenue
bonds authorized by the commission for community and
technical college capital improvements or used by the
Council on a cash basis as provided under subdivision (4),
subsection (j), section eighteen, article twenty-two, chapter
twenty-nine of this code for community and technical college
capital improvements or capital projects.

(l) Funding of systemwide and campus-specific revenue
bonds under any other section of this code is continued and
authorized pursuant to the terms of this section. Revenues of
any state institution of higher education pledged to the
repayment of any revenue bonds issued pursuant to this code
shall remain pledged.

(m) Any revenue bonds for state institutions of higher
education proposed to be issued under this section or other
sections of this code first must be approved by the
commission.

(n) Revenue bonds issued pursuant to this code may be
issued by the commission or governing boards, either singly
or jointly.

(o) Fees pledged for repayment of revenue bonds issued
under this section or article twelve-b, chapter eighteen prior
to the effective date of this section shall be transferred to the
commission in a manner prescribed by the commission. The
commission may transfer funds from the accounts of
institutions pledged for the repayment of revenue bonds
issued prior to the effective date of this section or issued
subsequently by the commission upon the request of
189 institutions, if an institution fails to transfer the pledged
190 revenues to the commission in a timely manner.

191 (p) Effective July 1, 2004, the capital and auxiliary
192 capital fees authorized by this section and section one of this
193 article are in lieu of any other fees set out in this code for
194 capital and auxiliary capital projects to benefit public higher
195 education institutions. Notwithstanding any other provisions
196 of this code to the contrary, in the event any capital, tuition,
197 registration or auxiliary fees are pledged to the payment of
198 any revenue bonds issued pursuant to any general bond
199 resolutions of the commission, any of its predecessors or any
200 institution, adopted prior to the effective date of this section,
201 such fees shall remain in effect in amounts not less than the
202 amounts in effect as of that date, until the revenue bonds
203 payable from any of the fees have been paid or the pledge of
204 the fees is otherwise legally discharged.

CHAPTER 29. MISCELLANEOUS BOARDS AND
OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State Lottery Fund; appropriations and deposits;
not part of general revenue; no transfer of state
funds after initial appropriation; use and
repayment of initial appropriation; allocation of
fund for prizes, net profit and expenses; surplus;
State Lottery Education Fund; State Lottery
Senior Citizens Fund; allocation and
appropriation of net profits.

(a) There is continued a special revenue fund in the State
Treasury which shall be designated and known as the State
Lottery Fund. The fund consists of all appropriations to the
fund and all interest earned from investment of the fund and
any gifts, grants or contributions received by the fund. All
revenues received from the sale of lottery tickets, materials
and games shall be deposited with the State Treasurer and
placed into the State Lottery Fund. The revenue shall be disursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the Auditor and Treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or Lottery Fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed $250,000. On a monthly basis, the director shall report to the Joint Committee on Government and Finance of the Legislature any surplus in excess of $250,000 and remit to the State Treasurer the entire amount of those surplus funds in excess of $250,000 which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the School Building Debt Service Fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, then satisfying the requirements for funds dedicated to the Education, Arts, Sciences and Tourism Debt Service Fund, in subsection (i) of this section to retire
the bonds authorized to be issued pursuant to section eleven-
a, article six, chapter five of this code and section sixteen-a,
article fifteen, chapter thirty-one of this code, and then
satisfying the requirements for funds dedicated to the
Community and Technical College Capital Improvement
Fund in subsection (j) of this section to retire the bonds for
community and technical college capital improvements
authorized to be issued pursuant to section eight, article ten,
chapter eighteen-b of this code, any and all remaining funds
in the State Lottery Fund shall be made available to pay debt
service in connection with any revenue bonds issued pursuant
to section eighteen-a of this article, if and to the extent
needed for such purpose from time to time. The Legislature
shall annually appropriate all of the remaining amounts
allocated as net profits in subsection (e) of this section, in
such proportions as it considers beneficial to the citizens of
this state, to: (1) The Lottery Education Fund created in
subsection (g) of this section; (2) the School Construction
Fund created in section six, article nine-d, chapter eighteen
of this code; (3) the Lottery Senior Citizens Fund created in
subsection (k) of this section; and (4) the Division of Natural
Resources created in section three, article one, chapter twenty
of this code and the West Virginia Development Office as
created in section one, article two, chapter five-b of this code,
in accordance with subsection (l) of this section. No transfer
to any account other than the School Building Debt Service
Fund, the Education, Arts, Sciences and Tourism Debt
Service Fund, the Community and Technical College Capital
Improvement Fund, the Economic Development Project Fund
created under section eighteen-a, article twenty-two, chapter
twenty-nine of this code, or any fund from which debt service
is paid under subsection (c), section eighteen-a of this article
may be made in any period of time in which a default exists
in respect to debt service on bonds issued by the School
Building Authority, the State Building Commission, the
Higher Education Policy Commission, the Economic
Development Authority or which are otherwise secured by
lottery proceeds. No additional transfer may be made to any
account other than the School Building Debt Service Account and the Education, Arts, Sciences and Tourism Debt Service Fund, and the Community and Technical College Capital Improvement Fund, when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the School Building Authority, the State Building Commission and the Higher Education Policy Commission which are secured by net profits.

(g) There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Education Fund. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the Lottery Education Fund by the State Treasurer. The Lottery Education Fund shall also consist of all interest earned from investment of the Lottery Education Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Education Fund from any source. The revenues received or earned by the Lottery Education Fund shall be disbursed in the manner provided below and may not be treated by the Auditor and Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Education Fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the School Building Debt Service Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after April 1, 1994, as certified to the lottery
Ch. 14] PUBLIC FUNDING 1975

director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed $1,800,000 nor may the total allocation of the net profits to be paid into the School Building Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $18 million. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the School Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed $27 million annually, may be granted by the School Building Authority in favor of the bonds it issues which are secured by the net lottery profits. When the school improvement bonds, secured by profits from the lottery and deposited in the School Debt Service Fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the School Construction Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before July 28, 1996, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds issued in accordance with section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter thirty-one of this code are outstanding, the lottery director shall allocate to the Education, Arts, Sciences and Tourism Debt Service Fund, created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the
projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after April 1, 1996, as certified to the lottery director in accordance with the provisions of section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter thirty-one of this code. In no event may the monthly amount allocated exceed $1 million nor may the total allocation paid into the Education, Arts, Sciences and Tourism Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $10 million. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Education, Arts, Sciences and Tourism Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed $15 million annually, may be granted by the State Building Commission in favor of the bonds it issues which are secured by the net lottery profits.

(j) Beginning on or before July 28, 2008, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the Community and Technical College Capital Improvement Fund, created pursuant to section eight, article ten, chapter eighteen-b of this code, as a third priority from net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued or to be issued, on or after April 1, 2008, as certified by the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed $500,000 nor may the total
allocation paid to the Community and Technical Capital Improvement Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $5 million. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Community and Technical College Capital Improvement Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(1) A third-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not exceeding $7,500,000 annually, may be granted by the Higher Education Policy Commission in favor of the bonds it issues which are secured by the net lottery profits.

(2) When the community and technical college capital improvement bonds secured by profits from the lottery and deposited in the Community and Technical College Capital Improvement Fund mature, the profits shall become available for debt service on additional community and technical college capital improvement bonds as a second priority from the net profits of the lottery.

(3) The Council for Community and Technical College Education shall approve all community and technical college capital improvement plans prior to the distribution of bond proceeds.

(4) Prior to the issuance of community and technical college revenue bonds pursuant to this subsection, the lottery director shall transfer $5 million to the Community and Technical College Improvement Fund, less any amounts needed for initial debt service payments, to be used on a cash basis for community and technical college capital improvements and capital projects.
(k) There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Senior Citizens Fund. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the Lottery Senior Citizens Fund by the State Treasurer. The Lottery Senior Citizens Fund shall also consist of all interest earned from investment of the Lottery Senior Citizens Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Senior Citizens Fund from any source. The revenues received or earned by the Lottery Senior Citizens Fund shall be distributed in the manner provided below and may not be treated by the Auditor or Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Senior Citizens Fund to any senior citizens medical care and other programs it considers beneficial to the citizens of this state.

(l) The Division of Natural Resources and the West Virginia Development Office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the Division of Natural Resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.
CHAPTER 15

(H.B. 104 By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed June 2, 2009; in effect from passage]
[Approved by the Governor on June 16, 2009.]

AN ACT to amend and reenact §11-14C-48 of the Code of West Virginia, 1931, as amended, all relating to the Motor Fuel Excise Tax Shortfall Reserve Fund; providing for continuation of the Motor Fuel Excise Tax Shortfall Reserve Fund; specifying termination of the Motor Fuel Excise Tax Shortfall Reserve Fund in 2013; and requiring the Commissioner of Highways to submit reports to the Joint Committee on Government and Finance for a specified time at specified intervals.

Be it enacted by the Legislature of West Virginia:

That §11-14C-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.


1. (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
(b) Monthly shortfalls for fiscal years beginning on July 1, 2008, 2009, 2010, 2011 and 2012. -- Beginning on July 31 of each fiscal year beginning in 2008, 2009, 2010, 2011 and 2012, and on the last day of each month of each specified fiscal year until, and including, June 30, 2013, 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 June 30, 2013.

(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 each specified fiscal year through total aggregate monthly transfers shall not exceed 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 June 30, 2013: Provided, however, That
transfers attributable to the reconciliation for the period beginning July 1, 2012, to June 30, 2013, mandated by paragraph (2) of this subsection shall be made, if required.

(2) Annual reconciliation. -- On June 30 of each fiscal year beginning in 2008, 2009, 2010, 2011 and 2012, 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 each of the specified fiscal years.

(A) Transfer for annual reconciliation for the fiscal year. -- The amount of the annual motor fuel excise tax revenue shortfall that occurred for each specified fiscal year 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 each specified fiscal year 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 August 1 next succeeding the end of each such specified fiscal year, 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 each such fiscal year through total aggregate monthly transfers shall not exceed 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 each specified fiscal year through total aggregate monthly transfers is greater than the amount of the annual motor fuel excise tax revenue shortfall that occurred over the same fiscal year, 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, and moneys transferred shall accordingly decrease.

(c) Definitions. --

(1) "Calendar year" means the year beginning on January 1 and ending on December 31.

(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.

(d) 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 1, 2008 through June 30, 2013, providing an analysis of the financial status of the State Road Fund and funds for highway maintenance.

WHEREAS, The Governor submitted to the Legislature on June 15, 2009, a Statement of Lottery Net Profits, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less regular appropriations for the fiscal year 2009; 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 June 30, 2009; therefore

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

That the total appropriation for the fiscal year ending June 30, 2009, to fund 3951, fiscal year 2009, organization 0402, be supplemented and amended by adding new items of appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II--APPROPRIATIONS.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Sec. 4. Appropriations from Lottery Net Profits.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>248-State Department of Education</th>
</tr>
</thead>
</table>

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund 3951 FY 2009 Org 0402</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>GED Testing (R)</td>
<td>$75,000</td>
</tr>
<tr>
<td>Tax Assessment Errors</td>
<td>$170,295</td>
</tr>
<tr>
<td>Student Enrichment Program (R)</td>
<td>$1,200,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for GED Testing (fund 3951, activity 339) and Student Enrichment Program (fund 3951, activity 879) at the close of fiscal year 2009 are hereby reappropriated for expenditure during fiscal year 2010.
17 And that the total appropriation for the fiscal year ending
18 June 30, 2009, to fund 4908, fiscal year 2009, organization
19 0442, be supplemented and amended to read as follows:

20 TITLE II--APPROPRIATIONS.

21 Sec. 4. Appropriations from Lottery Net Profits.

22 254-Community and Technical College
23 Capital Improvement Fund

24 (WV Code Chapter 18B)

25 Fund 4908 FY 2009 Org 0442

26 Lottery
27 Activity Funds

28 1 Capital Outlay and
29 2 Improvements - Total (R) .... 847 $ 5,000,000

30 Any unexpended balance remaining in the appropriation
31 for Capital Outlay and Improvements - Total (fund 4908,
32 activity 847) at the close of fiscal year 2009 is hereby
33 reappropriated for expenditure during fiscal year 2010.

34 And that the total appropriation for the fiscal year ending
35 June 30, 2009, to fund 4925, fiscal year 2009, organization
36 0441, be supplemented and amended by adding new items of
37 appropriation as follows:

38 TITLE II--APPROPRIATIONS.

39 Sec. 4. Appropriations from Lottery Net Profits.

40 255-Higher Education Policy Commission-
41 Lottery Education-
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 fiscal year 2009.
fund 0186, fiscal year 2009, organization 0201, by supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2009, to fund 0186, fiscal year 2009, organization 0201, be supplemented and amended by decreasing an existing item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF ADMINISTRATION

4 18-Department of Administration-
5   Office of the Secretary

6 (WV Code Chapter 5F)

7 Fund 0186 FY 2009 Org 0201

8 General
9 Revenue
10 Activity Funds
11 9 Lease Rental Payments ............ 516 $ 853,728

12 And that the total appropriation for the fiscal year ending
13 June 30, 2009, to fund 0186, fiscal year 2009, organization
14 0201, be supplemented and amended by creating a new item
15 of appropriation as follows:

16 TITLE II--APPROPRIATIONS.

17 Section 1. Appropriations from General Revenue.

18 DEPARTMENT OF ADMINISTRATION
The purpose of this supplemental appropriation bill is to supplement, amend, decrease and create a new item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2009 with no new money being appropriated.

CHAPTER 3

(S.B. 2003 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 17, 2009; in effect from passage.]
[Approved by the Governor on June 23, 2009.]

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 - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, to the Treasurer’s Office, fund 0126, fiscal year 2009, organization
1300, to the Secretary of State, fund 0155, fiscal year 2009, organization 1600, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2009, organization 0432, to the Department of Environmental Protection - Division of Environmental Protection, fund 0273, fiscal year 2009, organization 0313, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2009, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2009, organization 0511, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2009, organization 0608, to the West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2009, organization 0420, and to the Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2009, organization 0442, by supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated June 15, 2009, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less net appropriation balances forwarded and regular appropriations for the fiscal year 2009; 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 June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:
That the total appropriation for the fiscal year ending June 30, 2009, to fund 0105, fiscal year 2009, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations of General Revenue.

EXECUTIVE

7–Governor’s Office -
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2009 Org 0100

General Revenue Activity Funds

1a May 2009 Flood Recovery -
Surplus(R) .................... 236 $ 3,800,000

Any unexpended balance remaining in the appropriation for May 2009 Flood Recovery - Surplus (fund 0105, activity 236) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0126, fiscal year 2009, organization 1300, be supplemented and amended by increasing an existing item of appropriation as follows:

21 TITLE II--APPROPRIATIONS.

22 Section 1. Appropriations of General Revenue.
### Title 11--Appropriations

**Section 1. Appropriations of General Revenue.**

**EXECUTIVE**

**16-Secretary of State**

(WV Code Chapters 3, 5 and 59)

<table>
<thead>
<tr>
<th>General Revenue Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Title</strong></td>
</tr>
<tr>
<td>Personal Finance Education</td>
</tr>
<tr>
<td>Program for 21st Century Skills - Surplus</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for Personal Finance Education Program for 21st Century Skills (fund 0126, activity 313), and Personal Finance Education Program for 21st Century Skills - Surplus (fund 0126, activity 340) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0155, fiscal year 2009, organization 1600, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II--Appropriations.**

**Section 1. Appropriations of General Revenue.**

**EXECUTIVE**

**16-Secretary of State**

(WV Code Chapters 3, 5 and 59)

<table>
<thead>
<tr>
<th>General Revenue Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Title</strong></td>
</tr>
<tr>
<td>Fund 0155</td>
</tr>
</tbody>
</table>
1992 APPROPRIATIONS

<table>
<thead>
<tr>
<th>General Revenue</th>
<th>Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td></td>
</tr>
<tr>
<td>52</td>
<td></td>
</tr>
<tr>
<td>53 37 Unclassified - Surplus (R) . . . . . 097</td>
<td>$325,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0155, activity 097) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0256, fiscal year 2009, 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

35 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2009 Org 0307

<table>
<thead>
<tr>
<th>General Revenue</th>
<th>Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>68</td>
<td></td>
</tr>
<tr>
<td>69</td>
<td></td>
</tr>
<tr>
<td>70</td>
<td></td>
</tr>
<tr>
<td>71 7 Unclassified - Surplus (R) . . . . . 097</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0293, fiscal year 2009, organization 0432, 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

52 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2009 Org 0432

General Revenue

Activity Funds

4a Capital Outlay, Repairs &
4b Equipment - Surplus (R) . . . . . 677 $ 375,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0273, fiscal year 2009, organization 0313, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

57 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2009 Org 0313
### 1994 Appropriations

<table>
<thead>
<tr>
<th>General Revenue</th>
<th>Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>98</strong></td>
<td>99</td>
</tr>
<tr>
<td><strong>100</strong></td>
<td><strong>101 4a</strong></td>
</tr>
</tbody>
</table>

| Unclassified - Surplus (R) | 097 | $250,000 |

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0273, activity 097) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0407, fiscal year 2009, 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**

**60--Division of Health--Central Office**

(WV Code Chapter 16)

**Fund 0407 FY 2009 Org 0506**

<table>
<thead>
<tr>
<th>General Revenue</th>
<th>Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>118</strong></td>
<td><strong>119 120</strong></td>
</tr>
</tbody>
</table>

| Health Right Free Clinics - Surplus (R) | 728 | $300,000 |

---

112 Fund 0407 FY 2009 Org 0506

113 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

114 60--Division of Health--Central Office

115 (WV Code Chapter 16)

116 Fund 0407 FY 2009 Org 0506

117 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

118 60--Division of Health--Central Office

119 (WV Code Chapter 16)

120 Fund 0407 FY 2009 Org 0506

121 Health Right Free Clinics - Surplus (R)

122 $300,000
Any unexpended balance remaining in the appropriation for Health Right Free Clinics - Surplus (fund 0407, activity 728) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0403, fiscal year 2009, organization 0511, 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

64-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2009 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 In-Home Family Education -</td>
<td>$300,000</td>
</tr>
<tr>
<td>Surplus</td>
<td></td>
</tr>
<tr>
<td>34 Grants for Licensed Domestic</td>
<td></td>
</tr>
<tr>
<td>35 Violence Programs and Statewide</td>
<td></td>
</tr>
<tr>
<td>36 Prevention - Surplus (R)</td>
<td>1,000,000</td>
</tr>
<tr>
<td>40 Indigent Burials - Surplus (R)</td>
<td>300,000</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriations for Indigent Burials - Surplus (fund 0403, activity 076), and Grants for Licensed Domestic Violence Programs and Statewide Prevention - Surplus (fund 0403, activity 866) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0450, fiscal year 2009, 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

71--Division of Corrections - Correctional Units

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

Fund 0450 FY 2009 Org 0608

General Revenue Activity Funds

20 Stephens Correctional
20a Facility - Surplus (R) ....... 795 $ 750,000

Any unexpended balance remaining in the appropriation for Stephens Correctional Facility - Surplus (fund 0450, activity 795) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.
And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0596, fiscal year 2009, organization 0420, be supplemented and amended by adding new items 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

(WV Code Chapter 18B)

Fund 0596 FY 2009 Org 0420

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2a Unclassified - Surplus (R) . . . . . . . . .</td>
<td>$ 1,580,000</td>
</tr>
<tr>
<td>2b Equipment - Surplus (R) . . . . . . . . . .</td>
<td>3,500,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for Unclassified - Surplus (fund 0596, activity 097) and Equipment - Surplus (fund 0596, activity 341) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0586, fiscal year 2009, organization 0442, be supplemented and amended by adding a new item of appropriation as follows:
Section 1. Appropriations of General Revenue.

**HIGHER EDUCATION**

91–Higher Education Policy Commission -
System-
Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2009 Org 0442

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General Revenue</td>
</tr>
<tr>
<td>Unclassified - Surplus (R)</td>
<td>097</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0586, activity 097) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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 2009.
AN ACT supplementing, amending and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2009, organization 0803, for the fiscal year ending June 30, 2009.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated May 26, 2009, setting forth therein the cash balances and investments as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less net appropriation balances forwarded and regular appropriations for the fiscal year 2009; 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 June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2009, 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

93-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2009 Org 0803

<table>
<thead>
<tr>
<th>State Road Activity Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Bridge Repair and Replacement .. 273 $4,000,000</td>
</tr>
<tr>
<td>9 Interstate Construction ........ 278 11,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation bill is to supplement, amend and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending June 30, 2009.

CHAPTER 5

(S.B. 2005 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 17, 2009; in effect from passage.]
[Approved by the Governor on June 23, 2009.]

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 Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 0310, fiscal year 2010, organization 0932, by supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 0310, fiscal year 2010, organization 0932, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITIE II--APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 55-State Board of Rehabilitation-
5 Division of Rehabilitation Services

6 (WV Code Chapter 18)

7 Fund 0310 FY 2010 Org 0932

8
9 Activity Funds
10
11 3 Independent Living Services (R) . . 009 $ 232,469
12 7 Supported Employment Extended
13 8 Services . . . . . . . . . . . . . . . . . . . . 206 60,000
14 11 Employment Attendant Care Program 598 30,000
And that the total appropriation for the fiscal year ending June 30, 2009, to fund 0310, fiscal year 2010, organization 0932, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

55-State Board of Rehabilitation-
Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2010 Org 0932

<table>
<thead>
<tr>
<th>General Revenue</th>
<th>Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4 Employee Benefits</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation bill is to supplement, amend, decrease and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2010 with no new money being appropriated.
CHAPTER 6

(S.B. 2006 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed June 17, 2009; in effect from passage.]
[Approved by the Governor on June 22, 2009.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the State Department of Education, fund 3517, fiscal year 2010, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

WHEREAS, The Governor submitted to the Legislature on June 15, 2009, a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenue for fiscal year 2009, less regular appropriations for the fiscal year 2009; and further included the estimate of revenue for fiscal year 2010, less regular appropriations for the fiscal year 2010; 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 June 30, 2010; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 3517, fiscal year 2010, organization 0402, be
supplemented and amended by increasing an item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

4 274-State Department of Education Fund 3517 FY 2010 Org 0402

6 1 Student Enrichment Program . . . .879 $ 5,000,000

7 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 2010.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2010, to the Department of Commerce - West Virginia Development Office - Broadband Deployment Fund, fund 3174, fiscal year 2010, organization 0307, by supplementing and amending chapter 10, Acts of the Legislature, regular session, 2009, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Commerce - West Virginia Development Office - Broadband Deployment Fund, fund 3174, fiscal year 2010, organization 0307, available for expenditure during the fiscal year ending June 30, 2010, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore
Be it enacted by the Legislature of West Virginia:

That chapter 10, Acts of the Legislature, regular session, 2009, 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 COMMERCE

4 124a--West Virginia Development Office —
5 Broadband Deployment Fund

6 (WV Code Chapter 31)

7 Fund 3174 FY 2010 Org 0307

8 Other

9 Activity Funds

10 1 Unclassified - Total ............... 096 $5,000,000

11 The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending June 30, 2010, 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 2010.
AN ACT to amend and reenact §21A-6A-1, §21A-6A-5 and §21A-6A-6 of the Code of West Virginia, 1931, as amended, all relating to extended unemployment compensation benefits; providing for a temporary "state 'on' indicator" based on the average rate of total unemployment; providing for temporary increases in the extended benefit period and total extended benefit amount during a high unemployment period; making technical amendments throughout; and correcting nomenclature throughout.

Be it enacted by the Legislature of West Virginia:

That §21A-6A-1, §21A-6A-5 and §21A-6A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


§21A-6A-5. Total extended benefit amount.


As used in this article, unless the context clearly requires otherwise:
(1) “Extended benefit period” means a period which:

(A) Begins with the third week after a week for which there is a state “on” indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state “off” indicator; or

(ii) The thirteenth consecutive week of such period. However, for periods beginning in a “high unemployment period,” as determined in accordance with subdivision (3), section five of this article, paragraph (B)(ii) of this subdivision shall be applied by substituting “twentieth” for “thirteenth.”

Notwithstanding the foregoing provisions of this subdivision, no extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) After September 25, 1982, there is a “state ‘on’ indicator” for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and
(B) Equaled or exceeded five percent.

(C) An extended benefit period shall be made hereunder as if subdivision (2) did not contain paragraph (A) thereof, but only if the commissioner determines that the rate of insured unemployment (not seasonally adjusted) equals or exceeds six percent.

(3) For weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 5, 2009, or, if the application of section 2005(a) of Title II of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("ARRA") is extended by act of Congress, ending on or before a date to be determined by the commissioner not to exceed the extended application of section 2005(a) of the ARRA, there is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with regulations of the United States Secretary of Labor, that:

(A) The average rate of total unemployment (seasonally adjusted) for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent, and

(B) The average rate of total unemployment in the state for the three-month period specified in paragraph (A) of this subdivision equals or exceeds one hundred ten percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(4) There is a state "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in either subdivision (2) or subdivision (3) result in a "state 'on' indicator."
(5) "Rate of insured unemployment" means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor, by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(7) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his or her eligibility period.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any provision of this code to the contrary, an individual’s eligibility period shall include any eligibility period provided in section 2005(b) of the ARRA.

(9) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:
(A) Has received, prior to such week, all of the regular benefits which were available to him or her under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his or her current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him or her although (i) as a result of a pending appeal with respect to wages or employment which were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to have entitled to added regular benefits, or (ii) he or she may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

(B) His or her benefit year having expired prior to such week, has no, or insufficient, wages or employment on the basis of which he or she could establish a new benefit year which would include such week; and

(C) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, 45 U.S.C., §361, et seq., the Trade Expansion Act of 1962, 19 U.S.C., §1801, et seq., the Automotive Products Trade Act of 1965, 19 U.S.C., §2001, et seq., and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee.
(10) “State law” means the unemployment insurance law of any state, approved by the United States Secretary of Labor under 26 U.S.C., §3304.

(11) No individual shall be entitled to extended benefits during a period of unemployment if he or she was disqualified under the provisions of subdivision (1), (2) or (3) of section three, article six of this chapter, which disqualification shall not be terminated until such individual has returned to covered employment and has been employed in covered employment for at least thirty working days.

(12)(A) Notwithstanding any other provisions of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the commissioner finds that during such period:

(i) He or she failed to accept an offer of suitable work or failed to apply for suitable work (as defined under subdivision (12)(C) of this section), to which he or she was referred by the commissioner; or

(ii) He or she failed to actively engage in seeking work as prescribed under subdivision (12)(E) of this section.

(B) An individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (12)(A) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he or she has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this subdivision the term “suitable work” means, with respect to any individual, any work which
is within such individual's capabilities: Provided, That the
gross average weekly remuneration payable for the work
must exceed the sum of:

(i) The individual's average weekly benefit amount (as
determined under subdivision (12)(D) of this section) plus;

(ii) The amount, if any, of supplemental unemployment
benefits (as defined in 26 U.S.C., §501(c)(17)(D)) payable to
such individual for such week; and further,

(iii) Pays wages equal to the higher of:

(I) The minimum wages provided by 29 U.S.C.,
§206(a)(1), without regard to any exemption; or

(II) The state or local minimum wage;

(iv) Provided that no individual shall be denied extended
benefits for failure to accept an offer or referral to any job
which meets the definition of suitability as described above
if:

(I) The position was not offered to such individual in
writing and was not listed with the employment service; or

(II) Such failure could not result in a denial of benefits
under the definition of suitable work for regular benefit
claimants in section five, article six of this chapter, to the
extent that the criteria of suitability in that section are not
inconsistent with the provisions of this subdivision; or

(III) The individual furnishes satisfactory evidence to the
commissioner that his or her prospects for obtaining work in
his or her customary occupation within a reasonably short
period are good. If such evidence is deemed satisfactory for
this purpose, the determination of whether any work is
suitable with respect to such individual shall be made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified in this subdivision.

(D) Notwithstanding the provisions of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by 26 U.S.C., §3304(a)(5) and set forth herein under subdivision (12)(C)(iii)(I) of this section.

(E) For the purposes of subdivision (12)(A)(ii) of this section an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) The individual furnishes tangible evidence that he or she has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (12)(C) of this section.

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.
(13) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(14) An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that he or she has been paid wages by an employer who was subject to the provisions of this chapter during the base period of his or her current benefit year in an amount at least equal to forty times his or her benefit rate for total unemployment.

(15) The provisions of subdivisions (11) and (12) of this section shall not apply at any time should such provisions be temporarily or permanently suspended by federal law. If these provisions are suspended by federal law, the provisions of state law which apply to claims for and the payment of regular benefits shall apply to claims for and the payment of extended benefits.

§21A-6A-5. Total extended benefit amount.

The total extended benefit amount payable to an eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to him or her under this chapter in his or her applicable benefit year;
(2) Thirteen times his or her weekly benefit amount which was payable to him or her under this chapter for a week of total unemployment in the applicable benefit year: Provided, That an individual filing for extended benefits through the interstate benefit payment plan and residing in a state where an extended benefit period is not in effect shall be limited to payment for only the first two weeks of such extended benefits: Provided, however, That during any fiscal year in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to his or her applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under section four, article six-a of this chapter in the weekly amounts paid to the individual.

(3)(A) For weeks beginning in a high unemployment period, subdivision (1) of this section shall be applied by substituting “eighty percent” for “fifty percent” and subdivision (2) of this section shall be applied by substituting “twenty” for “thirteen.”

(B) For the purposes of this article, the term “high unemployment period” means any period during which the provisions of subdivision (3), section one of this article would result in a “state ‘on’ indicator” if subdivision (3), section one of this article were applied by substituting “eight percent” for “six and one-half percent.”


(1) Whenever an extended benefit period is to become effective in this state, or in all states, as a result of a state or a national “on” indicator, or an extended benefit period is to
be terminated in this state as a result of a state “off” indicator or state and national “off” indicators, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision (5), section one of this article shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

(3) Whenever, during a period when emergency unemployment compensation benefits are being paid under the provisions of the Emergency Unemployment Compensation Act of 1991, as amended, or under any subsequent extension or reenactment thereof, the state “on” indicator as defined in subdivisions (2) or (3) of section one of this article triggers on a period of extended benefits, the Governor of this state may elect to not implement the state statutory provision and continue the payment of benefits under the Emergency Unemployment Compensation Act of 1991, as amended, to those individuals who have exhausted their entitlement to regular unemployment compensation under state law.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2009

HOUSE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>10</td>
<td>2566</td>
<td>55</td>
<td>2839</td>
<td>171</td>
</tr>
<tr>
<td>2170</td>
<td>151</td>
<td>2567</td>
<td>1</td>
<td>2841</td>
<td>223</td>
</tr>
<tr>
<td>2218</td>
<td>149</td>
<td>2569</td>
<td>27</td>
<td>2860</td>
<td>97</td>
</tr>
<tr>
<td>2222</td>
<td>147</td>
<td>2651</td>
<td>37</td>
<td>2863</td>
<td>221</td>
</tr>
<tr>
<td>2225</td>
<td>145</td>
<td>2652</td>
<td>36</td>
<td>2869</td>
<td>94</td>
</tr>
<tr>
<td>2305</td>
<td>51</td>
<td>2660</td>
<td>138</td>
<td>2870</td>
<td>194</td>
</tr>
<tr>
<td>2309</td>
<td>176</td>
<td>2684</td>
<td>79</td>
<td>2877</td>
<td>156</td>
</tr>
<tr>
<td>2335</td>
<td>86</td>
<td>2685</td>
<td>219</td>
<td>2884</td>
<td>153</td>
</tr>
<tr>
<td>2360</td>
<td>116</td>
<td>2690</td>
<td>3</td>
<td>2885</td>
<td>110</td>
</tr>
<tr>
<td>2401</td>
<td>212</td>
<td>2694</td>
<td>72</td>
<td>2904</td>
<td>87</td>
</tr>
<tr>
<td>2404</td>
<td>45</td>
<td>2695</td>
<td>126</td>
<td>2913</td>
<td>127</td>
</tr>
<tr>
<td>2407</td>
<td>40</td>
<td>2701</td>
<td>61</td>
<td>2916</td>
<td>113</td>
</tr>
<tr>
<td>2418</td>
<td>105</td>
<td>2702</td>
<td>192</td>
<td>2920</td>
<td>66</td>
</tr>
<tr>
<td>2419</td>
<td>44</td>
<td>2703</td>
<td>193</td>
<td>2926</td>
<td>47</td>
</tr>
<tr>
<td>2421</td>
<td>163</td>
<td>2719</td>
<td>20</td>
<td>2931</td>
<td>207</td>
</tr>
<tr>
<td>2423</td>
<td>174</td>
<td>2723</td>
<td>161</td>
<td>2950</td>
<td>119</td>
</tr>
<tr>
<td>2464</td>
<td>90</td>
<td>2734</td>
<td>195</td>
<td>2952</td>
<td>63</td>
</tr>
<tr>
<td>2474</td>
<td>6</td>
<td>2737</td>
<td>53</td>
<td>2958</td>
<td>59</td>
</tr>
<tr>
<td>2504</td>
<td>197</td>
<td>2738</td>
<td>75</td>
<td>2968</td>
<td>201</td>
</tr>
<tr>
<td>2528</td>
<td>173</td>
<td>2739</td>
<td>74</td>
<td>2976</td>
<td>200</td>
</tr>
<tr>
<td>2530</td>
<td>82</td>
<td>2742</td>
<td>38</td>
<td>2981</td>
<td>92</td>
</tr>
<tr>
<td>2531</td>
<td>175</td>
<td>2753</td>
<td>71</td>
<td>2999</td>
<td>209</td>
</tr>
<tr>
<td>2532</td>
<td>177</td>
<td>2757</td>
<td>140</td>
<td>3011</td>
<td>35</td>
</tr>
<tr>
<td>2535</td>
<td>208</td>
<td>2771</td>
<td>7</td>
<td>3017</td>
<td>211</td>
</tr>
<tr>
<td>2536</td>
<td>58</td>
<td>2788</td>
<td>56</td>
<td>3036</td>
<td>67</td>
</tr>
<tr>
<td>2539</td>
<td>168</td>
<td>2795</td>
<td>125</td>
<td>3047</td>
<td>182</td>
</tr>
<tr>
<td>2541</td>
<td>4</td>
<td>2801</td>
<td>169</td>
<td>3063</td>
<td>124</td>
</tr>
<tr>
<td>2557</td>
<td>158</td>
<td>2819</td>
<td>150</td>
<td>3066</td>
<td>95</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2009

HOUSE BILLS
Page Two

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>3074</td>
<td>204</td>
</tr>
<tr>
<td>3076</td>
<td>142</td>
</tr>
<tr>
<td>3082</td>
<td>104</td>
</tr>
<tr>
<td>3083</td>
<td>21</td>
</tr>
<tr>
<td>3120</td>
<td>178</td>
</tr>
<tr>
<td>3134</td>
<td>91</td>
</tr>
<tr>
<td>3146</td>
<td>83</td>
</tr>
<tr>
<td>3155</td>
<td>198</td>
</tr>
<tr>
<td>3170</td>
<td>107</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>3189</td>
<td>24</td>
</tr>
<tr>
<td>3194</td>
<td>196</td>
</tr>
<tr>
<td>3195</td>
<td>109</td>
</tr>
<tr>
<td>3196</td>
<td>32</td>
</tr>
<tr>
<td>3197</td>
<td>160</td>
</tr>
<tr>
<td>3208</td>
<td>80</td>
</tr>
<tr>
<td>3229</td>
<td>88</td>
</tr>
<tr>
<td>3240</td>
<td>8</td>
</tr>
<tr>
<td>3278</td>
<td>139</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>3288</td>
<td>129</td>
</tr>
<tr>
<td>3295</td>
<td>217</td>
</tr>
<tr>
<td>3305</td>
<td>167</td>
</tr>
<tr>
<td>3313</td>
<td>81</td>
</tr>
<tr>
<td>3314</td>
<td>64</td>
</tr>
<tr>
<td>3336</td>
<td>115</td>
</tr>
<tr>
<td>3339</td>
<td>99</td>
</tr>
<tr>
<td>3340</td>
<td>85</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2009

<table>
<thead>
<tr>
<th>SENATE BILLS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bill No.</strong></td>
</tr>
<tr>
<td>12</td>
</tr>
<tr>
<td>99</td>
</tr>
<tr>
<td>153</td>
</tr>
<tr>
<td>172</td>
</tr>
<tr>
<td>195</td>
</tr>
<tr>
<td>227</td>
</tr>
<tr>
<td>239</td>
</tr>
<tr>
<td>243</td>
</tr>
<tr>
<td>244</td>
</tr>
<tr>
<td>246</td>
</tr>
<tr>
<td>256</td>
</tr>
<tr>
<td>258</td>
</tr>
<tr>
<td>259</td>
</tr>
<tr>
<td>261</td>
</tr>
<tr>
<td>262</td>
</tr>
<tr>
<td>263</td>
</tr>
<tr>
<td>278</td>
</tr>
<tr>
<td>279</td>
</tr>
<tr>
<td>280</td>
</tr>
<tr>
<td>284</td>
</tr>
<tr>
<td>293</td>
</tr>
<tr>
<td>306</td>
</tr>
<tr>
<td>307</td>
</tr>
<tr>
<td>318</td>
</tr>
<tr>
<td>321</td>
</tr>
<tr>
<td>322</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2009

SENATE BILLS
Page Two

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>532 .....</td>
<td>15</td>
</tr>
<tr>
<td>533 .....</td>
<td>210</td>
</tr>
<tr>
<td>537 .....</td>
<td>222</td>
</tr>
<tr>
<td>540 .....</td>
<td>205</td>
</tr>
<tr>
<td>552 .....</td>
<td>135</td>
</tr>
<tr>
<td>556 .....</td>
<td>77</td>
</tr>
<tr>
<td>572 .....</td>
<td>34</td>
</tr>
<tr>
<td>575 .....</td>
<td>106</td>
</tr>
<tr>
<td>587 .....</td>
<td>202</td>
</tr>
<tr>
<td>588 .....</td>
<td>22</td>
</tr>
<tr>
<td>594 .....</td>
<td>50</td>
</tr>
<tr>
<td>595 .....</td>
<td>121</td>
</tr>
<tr>
<td>600 .....</td>
<td>216</td>
</tr>
<tr>
<td>610 .....</td>
<td>102</td>
</tr>
<tr>
<td>612 .....</td>
<td>62</td>
</tr>
<tr>
<td>613 .....</td>
<td>100</td>
</tr>
<tr>
<td>631 .....</td>
<td>131</td>
</tr>
<tr>
<td>632 .....</td>
<td>123</td>
</tr>
<tr>
<td>636 .....</td>
<td>33</td>
</tr>
<tr>
<td>641 .....</td>
<td>199</td>
</tr>
<tr>
<td>669 .....</td>
<td>112</td>
</tr>
<tr>
<td>687 .....</td>
<td>117</td>
</tr>
<tr>
<td>694 .....</td>
<td>187</td>
</tr>
<tr>
<td>695 .....</td>
<td>179</td>
</tr>
<tr>
<td>706 .....</td>
<td>186</td>
</tr>
<tr>
<td>715 .....</td>
<td>25</td>
</tr>
<tr>
<td>719 .....</td>
<td>162</td>
</tr>
<tr>
<td>724 .....</td>
<td>215</td>
</tr>
<tr>
<td>756 .....</td>
<td>184</td>
</tr>
<tr>
<td>760 .....</td>
<td>54</td>
</tr>
<tr>
<td>761 .....</td>
<td>57</td>
</tr>
<tr>
<td>764 .....</td>
<td>93</td>
</tr>
<tr>
<td>767 .....</td>
<td>120</td>
</tr>
<tr>
<td>771 .....</td>
<td>12</td>
</tr>
<tr>
<td>772 .....</td>
<td>13</td>
</tr>
<tr>
<td>773 .....</td>
<td>14</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2009

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2567</td>
<td>27</td>
<td>2569</td>
<td>53</td>
<td>2737</td>
</tr>
<tr>
<td>2</td>
<td>472</td>
<td>28</td>
<td>341</td>
<td>54</td>
<td>760</td>
</tr>
<tr>
<td>3</td>
<td>2690</td>
<td>29</td>
<td>456</td>
<td>55</td>
<td>2566</td>
</tr>
<tr>
<td>4</td>
<td>2541</td>
<td>30</td>
<td>473</td>
<td>56</td>
<td>2788</td>
</tr>
<tr>
<td>5</td>
<td>445</td>
<td>31</td>
<td>404</td>
<td>57</td>
<td>761</td>
</tr>
<tr>
<td>6</td>
<td>2474</td>
<td>32</td>
<td>3196</td>
<td>58</td>
<td>2536</td>
</tr>
<tr>
<td>7</td>
<td>2771</td>
<td>33</td>
<td>636</td>
<td>59</td>
<td>2958</td>
</tr>
<tr>
<td>8</td>
<td>3240</td>
<td>34</td>
<td>572</td>
<td>60</td>
<td>521</td>
</tr>
<tr>
<td>9</td>
<td>501</td>
<td>35</td>
<td>3011</td>
<td>61</td>
<td>2701</td>
</tr>
<tr>
<td>10</td>
<td>2010</td>
<td>36</td>
<td>2652</td>
<td>62</td>
<td>612</td>
</tr>
<tr>
<td>11</td>
<td>403</td>
<td>37</td>
<td>2651</td>
<td>63</td>
<td>2952</td>
</tr>
<tr>
<td>12</td>
<td>771</td>
<td>38</td>
<td>2742</td>
<td>64</td>
<td>3314</td>
</tr>
<tr>
<td>13</td>
<td>772</td>
<td>39</td>
<td>425</td>
<td>65</td>
<td>339</td>
</tr>
<tr>
<td>14</td>
<td>773</td>
<td>40</td>
<td>2407</td>
<td>66</td>
<td>2920</td>
</tr>
<tr>
<td>15</td>
<td>532</td>
<td>41</td>
<td>263</td>
<td>67</td>
<td>3036</td>
</tr>
<tr>
<td>16</td>
<td>476</td>
<td>42</td>
<td>99</td>
<td>68</td>
<td>451</td>
</tr>
<tr>
<td>17</td>
<td>489</td>
<td>43</td>
<td>280</td>
<td>69</td>
<td>370</td>
</tr>
<tr>
<td>18</td>
<td>424</td>
<td>44</td>
<td>2419</td>
<td>70</td>
<td>347</td>
</tr>
<tr>
<td>19</td>
<td>503</td>
<td>45</td>
<td>2404</td>
<td>71</td>
<td>2753</td>
</tr>
<tr>
<td>20</td>
<td>2719</td>
<td>46</td>
<td>259</td>
<td>72</td>
<td>2694</td>
</tr>
<tr>
<td>21</td>
<td>3083</td>
<td>47</td>
<td>2926</td>
<td>73</td>
<td>405</td>
</tr>
<tr>
<td>22</td>
<td>588</td>
<td>48</td>
<td>440</td>
<td>74</td>
<td>2739</td>
</tr>
<tr>
<td>23</td>
<td>243</td>
<td>49</td>
<td>528</td>
<td>75</td>
<td>2738</td>
</tr>
<tr>
<td>24</td>
<td>3189</td>
<td>50</td>
<td>594</td>
<td>76</td>
<td>244</td>
</tr>
<tr>
<td>25</td>
<td>715</td>
<td>51</td>
<td>2305</td>
<td>77</td>
<td>556</td>
</tr>
<tr>
<td>26</td>
<td>498</td>
<td>52</td>
<td>338</td>
<td>78</td>
<td>398</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2009
Page Two

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>79</td>
<td>2684</td>
<td>103</td>
<td>384</td>
<td>127</td>
<td>2913</td>
</tr>
<tr>
<td>80</td>
<td>3208</td>
<td>104</td>
<td>3082</td>
<td>128</td>
<td>326</td>
</tr>
<tr>
<td>81</td>
<td>3313</td>
<td>105</td>
<td>2418</td>
<td>129</td>
<td>3288</td>
</tr>
<tr>
<td>82</td>
<td>2530</td>
<td>106</td>
<td>575</td>
<td>130</td>
<td>494</td>
</tr>
<tr>
<td>83</td>
<td>3146</td>
<td>107</td>
<td>3170</td>
<td>131</td>
<td>631</td>
</tr>
<tr>
<td>84</td>
<td>373</td>
<td>108</td>
<td>414</td>
<td>132</td>
<td>434</td>
</tr>
<tr>
<td>85</td>
<td>3340</td>
<td>109</td>
<td>3195</td>
<td>133</td>
<td>284</td>
</tr>
<tr>
<td>86</td>
<td>2335</td>
<td>110</td>
<td>2885</td>
<td>134</td>
<td>495</td>
</tr>
<tr>
<td>87</td>
<td>2904</td>
<td>111</td>
<td>321</td>
<td>135</td>
<td>552</td>
</tr>
<tr>
<td>88</td>
<td>3229</td>
<td>112</td>
<td>669</td>
<td>136</td>
<td>278</td>
</tr>
<tr>
<td>89</td>
<td>261</td>
<td>113</td>
<td>2916</td>
<td>137</td>
<td>431</td>
</tr>
<tr>
<td>90</td>
<td>2464</td>
<td>114</td>
<td>307</td>
<td>138</td>
<td>2660</td>
</tr>
<tr>
<td>91</td>
<td>3134</td>
<td>115</td>
<td>3336</td>
<td>139</td>
<td>3278</td>
</tr>
<tr>
<td>92</td>
<td>2981</td>
<td>116</td>
<td>2360</td>
<td>140</td>
<td>2757</td>
</tr>
<tr>
<td>93</td>
<td>764</td>
<td>117</td>
<td>687</td>
<td>141</td>
<td>408</td>
</tr>
<tr>
<td>94</td>
<td>2869</td>
<td>118</td>
<td>262</td>
<td>142</td>
<td>3076</td>
</tr>
<tr>
<td>95</td>
<td>3066</td>
<td>119</td>
<td>2950</td>
<td>143</td>
<td>172</td>
</tr>
<tr>
<td>96</td>
<td>436</td>
<td>120</td>
<td>767</td>
<td>144</td>
<td>153</td>
</tr>
<tr>
<td>97</td>
<td>2860</td>
<td>121</td>
<td>595</td>
<td>145</td>
<td>2225</td>
</tr>
<tr>
<td>98</td>
<td>461</td>
<td>122</td>
<td>322</td>
<td>146</td>
<td>195</td>
</tr>
<tr>
<td>99</td>
<td>3339</td>
<td>123</td>
<td>632</td>
<td>147</td>
<td>2222</td>
</tr>
<tr>
<td>100</td>
<td>613</td>
<td>124</td>
<td>3063</td>
<td>148</td>
<td>227</td>
</tr>
<tr>
<td>101</td>
<td>335</td>
<td>125</td>
<td>2795</td>
<td>149</td>
<td>2218</td>
</tr>
<tr>
<td>102</td>
<td>610</td>
<td>126</td>
<td>2695</td>
<td>150</td>
<td>2819</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2009
Page Three

House Bills = 4 Digits Senate Bills = 2,3 Digits

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>151</td>
<td>2170</td>
<td>176</td>
<td>2309</td>
<td>201</td>
<td>2968</td>
</tr>
<tr>
<td>152</td>
<td>468</td>
<td>177</td>
<td>2532</td>
<td>202</td>
<td>587</td>
</tr>
<tr>
<td>153</td>
<td>2884</td>
<td>178</td>
<td>3120</td>
<td>203</td>
<td>382</td>
</tr>
<tr>
<td>154</td>
<td>344</td>
<td>179</td>
<td>695</td>
<td>204</td>
<td>3074</td>
</tr>
<tr>
<td>155</td>
<td>239</td>
<td>180</td>
<td>481</td>
<td>205</td>
<td>540</td>
</tr>
<tr>
<td>156</td>
<td>2877</td>
<td>181</td>
<td>492</td>
<td>206</td>
<td>258</td>
</tr>
<tr>
<td>157</td>
<td>12</td>
<td>182</td>
<td>3047</td>
<td>207</td>
<td>2931</td>
</tr>
<tr>
<td>158</td>
<td>2557</td>
<td>183</td>
<td>464</td>
<td>208</td>
<td>2535</td>
</tr>
<tr>
<td>159</td>
<td>256</td>
<td>184</td>
<td>756</td>
<td>209</td>
<td>2999</td>
</tr>
<tr>
<td>160</td>
<td>3197</td>
<td>185</td>
<td>318</td>
<td>210</td>
<td>533</td>
</tr>
<tr>
<td>161</td>
<td>2723</td>
<td>186</td>
<td>706</td>
<td>211</td>
<td>3017</td>
</tr>
<tr>
<td>162</td>
<td>719</td>
<td>187</td>
<td>694</td>
<td>212</td>
<td>2401</td>
</tr>
<tr>
<td>163</td>
<td>2421</td>
<td>188</td>
<td>279</td>
<td>213</td>
<td>329</td>
</tr>
<tr>
<td>164</td>
<td>346</td>
<td>189</td>
<td>453</td>
<td>214</td>
<td>410</td>
</tr>
<tr>
<td>165</td>
<td>470</td>
<td>190</td>
<td>306</td>
<td>215</td>
<td>724</td>
</tr>
<tr>
<td>166</td>
<td>487</td>
<td>191</td>
<td>493</td>
<td>216</td>
<td>600</td>
</tr>
<tr>
<td>167</td>
<td>3305</td>
<td>192</td>
<td>2702</td>
<td>217</td>
<td>3295</td>
</tr>
<tr>
<td>168</td>
<td>2539</td>
<td>193</td>
<td>2703</td>
<td>218</td>
<td>246</td>
</tr>
<tr>
<td>169</td>
<td>2801</td>
<td>194</td>
<td>2870</td>
<td>219</td>
<td>2685</td>
</tr>
<tr>
<td>170</td>
<td>293</td>
<td>195</td>
<td>2734</td>
<td>220</td>
<td>515</td>
</tr>
<tr>
<td>171</td>
<td>2839</td>
<td>196</td>
<td>3194</td>
<td>221</td>
<td>2863</td>
</tr>
<tr>
<td>172</td>
<td>526</td>
<td>197</td>
<td>2504</td>
<td>222</td>
<td>537</td>
</tr>
<tr>
<td>173</td>
<td>2528</td>
<td>198</td>
<td>3155</td>
<td>223</td>
<td>2841</td>
</tr>
<tr>
<td>174</td>
<td>2423</td>
<td>199</td>
<td>641</td>
<td>224</td>
<td>490</td>
</tr>
<tr>
<td>175</td>
<td>2531</td>
<td>200</td>
<td>2976</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2009

HOUSE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>102</td>
<td>10</td>
</tr>
<tr>
<td>103</td>
<td>9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>104</td>
<td>15</td>
</tr>
<tr>
<td>105</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>109</td>
<td>8</td>
</tr>
<tr>
<td>113</td>
<td>14</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2009

SENATE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1001</td>
<td>.......</td>
<td>1006</td>
<td>.......</td>
<td>1011</td>
<td>.......</td>
</tr>
<tr>
<td>1002</td>
<td>.......</td>
<td>1009</td>
<td>.......</td>
<td>1014</td>
<td>.......</td>
</tr>
<tr>
<td>1003</td>
<td>.......</td>
<td>1010</td>
<td>.......</td>
<td>1015</td>
<td>.......</td>
</tr>
</tbody>
</table>
## DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

**First Extraordinary Session, 2009**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>105</td>
<td>6</td>
<td>1001</td>
<td>11</td>
<td>1003</td>
</tr>
<tr>
<td>2</td>
<td>1014</td>
<td>7</td>
<td>1006</td>
<td>12</td>
<td>1002</td>
</tr>
<tr>
<td>3</td>
<td>1015</td>
<td>8</td>
<td>109</td>
<td>13</td>
<td>1011</td>
</tr>
<tr>
<td>4</td>
<td>1009</td>
<td>9</td>
<td>103</td>
<td>14</td>
<td>113</td>
</tr>
<tr>
<td>5</td>
<td>1910</td>
<td>10</td>
<td>102</td>
<td>15</td>
<td>104</td>
</tr>
</tbody>
</table>

House Bills = 3 Digits

Senate Bills = 4 Digits
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2009

SENATE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>...... 1</td>
</tr>
<tr>
<td>2002</td>
<td>...... 2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill No.</td>
<td>Chapter</td>
</tr>
<tr>
<td>2003</td>
<td>...... 3</td>
</tr>
<tr>
<td>2004</td>
<td>...... 4</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill No.</td>
<td>Chapter</td>
</tr>
<tr>
<td>2005</td>
<td>...... 5</td>
</tr>
<tr>
<td>2006</td>
<td>...... 6</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2009

Senate Bills = 4 Digits

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2001</td>
</tr>
<tr>
<td>2</td>
<td>2002</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>2003</td>
</tr>
<tr>
<td>4</td>
<td>2004</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>2005</td>
</tr>
<tr>
<td>6</td>
<td>2006</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Third Extraordinary Session, 2009

HOUSE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>301</td>
<td>2</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Third Extraordinary Session, 2009

SENATE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>3003</td>
<td>. . . . 1</td>
</tr>
</tbody>
</table>
The first column gives the chapter assigned and the second column gives the bill number.

**Third Extraordinary Session, 2009**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3003</td>
</tr>
<tr>
<td>2</td>
<td>301</td>
</tr>
</tbody>
</table>
## INDEX

**Regular Session, 2009**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>24</td>
</tr>
</tbody>
</table>

**ADMINISTRATIVE PROCEDURES ACT:**
- Secretary of State
  - Agency rules
    - Electronic filing .................................. 1
    - Requirements ...................................... 1
  
**ADVERTISING:**
- Outdoor advertising
  - Restrictions
    - Amending .................................. 2

**AGRICULTURE:**
- Animals
  - Bovine tuberculosis
    - Testing for .................................... 3
  - Infected or exposed to disease
    - Appraisal ........................................ 3
    - Certificate of .................................. 3
  - Carcasses
    - Disposal of ........................................ 3
  - Euthanizing
    - Indemnity, right of ................................ 3
    - When right does not exist .......................... 3
    - Supervision ........................................ 3
  - Aquaculture facilities
    - Waste disposal
      - Regulating ...................................... 6
  - Conservation supervisors
    - Certification requirements for election
      - Removing ........................................ 5
  - Poultry
    - Trespassing
      - Damages
      - Owner liability ................................... 4
  - Solid Waste Management Act
    - Sludge management .................................. 6
<table>
<thead>
<tr>
<th>ALCOHOL/DRUG-FREE WORKPLACE ACT:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>7</td>
</tr>
<tr>
<td>Drug-free workplace policy</td>
<td></td>
</tr>
<tr>
<td>Reports</td>
<td>7</td>
</tr>
<tr>
<td>When not applicable</td>
<td>7</td>
</tr>
<tr>
<td>Violation</td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ALL-TERRAIN VEHICLES:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rider safety awareness courses</td>
<td></td>
</tr>
<tr>
<td>State institutions of higher education</td>
<td>8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ANIMAL EUTHANASIA:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas chambers</td>
<td></td>
</tr>
<tr>
<td>Prohibiting</td>
<td>9</td>
</tr>
<tr>
<td>Exceptions</td>
<td>9</td>
</tr>
<tr>
<td>Technicians</td>
<td></td>
</tr>
<tr>
<td>Drug selection</td>
<td>9</td>
</tr>
<tr>
<td>Recordkeeping</td>
<td>9</td>
</tr>
<tr>
<td>Scope of practice</td>
<td>9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPROPRIATIONS:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget Bill</td>
<td>10</td>
</tr>
<tr>
<td>Index to, by accounts</td>
<td>10</td>
</tr>
<tr>
<td>Supplemental</td>
<td></td>
</tr>
<tr>
<td>Adjutant General – State Militia</td>
<td>12</td>
</tr>
<tr>
<td>Agriculture, Department of</td>
<td>12</td>
</tr>
<tr>
<td>General John McCausland Memorial Farm</td>
<td>13</td>
</tr>
<tr>
<td>Land Protection Authority</td>
<td>14</td>
</tr>
<tr>
<td>Crime Victims Compensation Fund</td>
<td>12</td>
</tr>
<tr>
<td>Criminal Justice Services, Division of</td>
<td>12</td>
</tr>
<tr>
<td>Education, State Department of</td>
<td>12</td>
</tr>
<tr>
<td>Aid for exceptional children</td>
<td>12</td>
</tr>
<tr>
<td>School Lunch Program</td>
<td>12</td>
</tr>
<tr>
<td>Environmental Protection, Division of</td>
<td>12</td>
</tr>
<tr>
<td>Forestry, Division of</td>
<td>12</td>
</tr>
<tr>
<td>Governor’s Office –</td>
<td></td>
</tr>
<tr>
<td>National and Community Service, Office for</td>
<td>12</td>
</tr>
<tr>
<td>Office of Economic Opportunity</td>
<td>12</td>
</tr>
<tr>
<td>Health Care Authority, West Virginia</td>
<td>12</td>
</tr>
<tr>
<td>Health, Division of –</td>
<td></td>
</tr>
<tr>
<td>Central Office</td>
<td>12</td>
</tr>
<tr>
<td>Safe Drinking Water Treatment</td>
<td>12</td>
</tr>
<tr>
<td>Human Services, Division of</td>
<td>12</td>
</tr>
<tr>
<td>Child Care and Development</td>
<td>12</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS - (Continued):

<table>
<thead>
<tr>
<th>Program</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary Assistance for Needy Families</td>
<td>12</td>
</tr>
<tr>
<td>Motor Vehicles, Division of</td>
<td>13</td>
</tr>
<tr>
<td>Northern Community and Technical College</td>
<td>13</td>
</tr>
<tr>
<td>Public Transit, Division of</td>
<td>12</td>
</tr>
<tr>
<td>Rehabilitation Services, Division of</td>
<td>12</td>
</tr>
<tr>
<td>Senior Services, Bureau of</td>
<td>12</td>
</tr>
<tr>
<td>Community Based Service Fund</td>
<td>13</td>
</tr>
<tr>
<td>Public Transit, Division of</td>
<td>12</td>
</tr>
<tr>
<td>Transportation, Department of</td>
<td>11</td>
</tr>
<tr>
<td>Workforce West Virginia</td>
<td>12</td>
</tr>
</tbody>
</table>

### BANKS AND BANKING:

- Board of banking and financial institutions
  - Meetings
    - Expense of members
    - Reimbursement
      - Providing: 17
  - Branching procedures
    - Sound financial condition
      - Definition
        - Creating: 19
  - Maxwell Governmental Access to Financial Records Act
    - Definitions: 16
  - Regulated consumers lenders
    - Loans
      - Licenses: 15
  - Residential Mortgage Lender, Broker and Servicer Act
    - Definitions and general provisions: 15
    - Effective date: 15
  - Lender and broker originator
    - Licenses
      - Requiring: 15
      - Exemptions: 15
  - Licenses
    - Applications: 15
    - Not transferrable: 15
    - Refusal or issuance of: 15
    - Reinstatement: 15
    - Suspension or revocation
      - Grounds for: 15
      - Notice: 15
      - Participation: 15
    - Records and reports: 15
  - Safe Mortgage Licensing Act
    - Confidentiality: 15
BANKS AND BANKING - (Continued):
Definitions ........................................ 15
Effective date ..................................... 15
Enforcement authorities ........................... 15
License and registration ........................... 15
  Application ..................................... 15
  Authority to require ........................... 15
  Investigation and examination authority ....... 15
  Issuance ...................................... 15
  Prelicensing and relicensing ................... 15
Renewal Standards ................................ 15
Loan originators
  Continuing education ........................... 15
  Testing ....................................... 15
Nationwide Mortgage Licensing System
  Information challenge process ................... 15
  Purpose ....................................... 15
  Severability ................................... 15
Surety bond Requiring ............................... 15
State-chartered banks
  Conversion of bank, thrift or credit union ...... 18
  Effect ...................................... 18
  Procedure ................................... 18
BEER:
Nonintoxicating beer
  Craft beer Definitions
    Amending ..................................... 20
BLOOD DONATIONS:
Persons sixteen years of age
  Parental consent Requiring ......................... 21
BOARDS AND COMMISSIONS:
Capitol Building Commission
  Adding members .................................. 24
Public Insurance Agency Advisory Board
  Abolishing .................................... 22
BONDED INDEBTEDNESS:
General obligation bonds
  Issuing ....................................... 23
**INDEX**

**CAPITOL BUILDING COMMISSION:**
- Members
  - Adding ....................................... 24

**CHESAPEAKE BAY WATERSHED:**
- Chesapeake Bay Restoration Initiative
  - Establishing ................................... 25

**CHILD WELFARE:**
- Early childhood education programs ................... 26
- Criteria ........................................ 26
  - Quality rating and improvement system
    - Advisory council ............................. 26
    - Finding and intent ......................... 26
    - Pilot projects ................................ 26
  - Statewide quality improvement system
    - Implementation
      - Financial plan ............................ 26
  - Statewide quality rating system
    - Creating .................................... 26
    - Legislative rule required ................. 26
    - Minimum provisions ....................... 26

- Juvenile justice database
  - Administration of
    - Transferring authority ..................... 28

- Juvenile Services Reimbursement Offender Fund
  - Creating ................................. 27

**CIGARETTE FIRE SAFETY:**
- Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act
  - Certification and product change ............... 29
  - Cigarette packaging
    - Marking of ................................ 29
  - Definitions .................................. 29
  - Effective date ................................ 29
  - Fund ......................................... 29
  - Implementation ................................ 29
  - Inspection ................................... 29
  - Penalties .................................... 29
  - Preemption .................................. 29
  - Regulation
    - Local ....................................... 29
  - Sales of cigarettes
    - Outside West Virginia ....................... 29
  - Short title .................................. 29
  - Test method and performance standards ........... 29
### CIVIL SERVICE SYSTEM:
Job openings
- Posting of ..................................... 30 395

### CIVIL WAR SESQUICENTENNIAL:
Sesquicentennial of the American Civil War Commission
- Advisory council ........................................ 31 399
- Contracts
  - Duration of Limitations .................................. 31 399
  - Establishing ............................................. 31 397
  - Expense reimbursement ................................... 31 398
  - Findings .................................................. 31 397
  - Meetings .................................................. 31 399
  - Membership ................................................. 31 397
  - Terms ....................................................... 31 397
  - Vacancies
    - Filling of ............................................. 31 397
- Powers and duties ......................................... 31 399
- Purpose ..................................................... 31 397
- Quorum ....................................................... 31 399
- Termination of ............................................. 31 400

### CLAIMS:
Claims against the State ........................................ 32, 33 401, 412

### CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>1</td>
<td>30</td>
<td>SB261</td>
<td>708</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>2a</td>
<td>HB2464</td>
<td>713</td>
</tr>
<tr>
<td>3</td>
<td>3A</td>
<td>1</td>
<td>HB3134</td>
<td>716</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>HB3134</td>
<td>716</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>HB3134</td>
<td>717</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>HB3134</td>
<td>719</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>HB3134</td>
<td>719</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>4</td>
<td>HB2926</td>
<td>455</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>7</td>
<td>HB2981</td>
<td>720</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>23</td>
<td>HB2981</td>
<td>724</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>24</td>
<td>HB2981</td>
<td>727</td>
</tr>
<tr>
<td>3</td>
<td>6</td>
<td>9</td>
<td>SB764</td>
<td>728</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>5</td>
<td>HB2869</td>
<td>734</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>7</td>
<td>HB2869</td>
<td>736</td>
</tr>
<tr>
<td>4</td>
<td>8</td>
<td>1</td>
<td>HB3189</td>
<td>354</td>
</tr>
<tr>
<td>4</td>
<td>13*</td>
<td>1</td>
<td>SB404</td>
<td>397</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>SB404</td>
<td>397</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>SB404</td>
<td>398</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td>SB404</td>
<td>399</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td>SB404</td>
<td>399</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td>SB404</td>
<td>399</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td>SB404</td>
<td>400</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
<td>6</td>
<td>SB695</td>
<td>1469</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>48</td>
<td>SB244</td>
<td>573</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>7</td>
<td>HB3288</td>
<td>1069</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SB326</td>
<td>1048</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>9*</td>
<td>SB326</td>
<td>1053</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>12 a</td>
<td>SB481</td>
<td>1473</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>13</td>
<td>SB492</td>
<td>1475</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>16</td>
<td>HB3047</td>
<td>1481</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>24 a*</td>
<td>SB464</td>
<td>1483</td>
</tr>
<tr>
<td>5B</td>
<td>2</td>
<td>12</td>
<td>SB594</td>
<td>469</td>
</tr>
<tr>
<td>5F</td>
<td>2</td>
<td>1</td>
<td>SB588</td>
<td>337</td>
</tr>
<tr>
<td>5F</td>
<td>2</td>
<td>2</td>
<td>SB414</td>
<td>902</td>
</tr>
<tr>
<td>5G</td>
<td>1</td>
<td>3</td>
<td>HB2863</td>
<td>1763</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>1 b*</td>
<td>HB2926</td>
<td>457</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>3ff</td>
<td>SB440</td>
<td>460</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>15</td>
<td>HB2926</td>
<td>458</td>
</tr>
<tr>
<td>7</td>
<td>4</td>
<td>6</td>
<td>HB3120</td>
<td>1462</td>
</tr>
<tr>
<td>7</td>
<td>10</td>
<td>4</td>
<td>SB501</td>
<td>35</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>2</td>
<td>HB2702</td>
<td>1511</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>5</td>
<td>HB2702</td>
<td>1520</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>7</td>
<td>HB2702</td>
<td>1524</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>9 c</td>
<td>HB2702</td>
<td>1526</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>13</td>
<td>HB2702</td>
<td>1528</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>14</td>
<td>HB2702</td>
<td>1529</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>15</td>
<td>HB2702</td>
<td>1530</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>16</td>
<td>HB2702</td>
<td>1531</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>23</td>
<td>HB2702</td>
<td>1532</td>
</tr>
<tr>
<td>7</td>
<td>14 D</td>
<td>30</td>
<td>HB2702</td>
<td>1535</td>
</tr>
<tr>
<td>7 A</td>
<td>7</td>
<td>4 a*</td>
<td>SB239</td>
<td>1273</td>
</tr>
<tr>
<td>8</td>
<td>6</td>
<td>4 a*</td>
<td>SB256</td>
<td>1294</td>
</tr>
<tr>
<td>8</td>
<td>11</td>
<td>5</td>
<td>SB556</td>
<td>577</td>
</tr>
<tr>
<td>8</td>
<td>12</td>
<td>16 b*</td>
<td>HB3197</td>
<td>1302</td>
</tr>
<tr>
<td>8</td>
<td>13</td>
<td>13</td>
<td>HB2723</td>
<td>1393</td>
</tr>
<tr>
<td>8</td>
<td>14</td>
<td>24</td>
<td>SB719</td>
<td>1307</td>
</tr>
<tr>
<td>8</td>
<td>19</td>
<td>22*</td>
<td>HB2421</td>
<td>1308</td>
</tr>
<tr>
<td>8 A</td>
<td>7</td>
<td>2</td>
<td>SB256</td>
<td>1298</td>
</tr>
<tr>
<td>9</td>
<td>2</td>
<td>9 b*</td>
<td>SB767</td>
<td>1015</td>
</tr>
<tr>
<td>9</td>
<td>3</td>
<td>4</td>
<td>SB595</td>
<td>1019</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>4</td>
<td>3</td>
<td>SB767</td>
<td>1016</td>
</tr>
<tr>
<td>9</td>
<td>4 E*</td>
<td>1</td>
<td>HB2884</td>
<td>1268</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>HB2884</td>
<td>1268</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>HB2884</td>
<td>1269</td>
</tr>
<tr>
<td>9</td>
<td>5</td>
<td>11</td>
<td>SB322</td>
<td>1021</td>
</tr>
<tr>
<td>9</td>
<td>5</td>
<td>11 b</td>
<td>SB632</td>
<td>1026</td>
</tr>
<tr>
<td>11</td>
<td>6</td>
<td>23</td>
<td>HB3074</td>
<td>1590</td>
</tr>
<tr>
<td>11</td>
<td>6 I</td>
<td>3</td>
<td>SB540</td>
<td>1594</td>
</tr>
<tr>
<td>11</td>
<td>6 I</td>
<td>5</td>
<td>SB540</td>
<td>1596</td>
</tr>
<tr>
<td>11</td>
<td>8</td>
<td>26</td>
<td>SB258</td>
<td>1636</td>
</tr>
<tr>
<td>11</td>
<td>10</td>
<td>5 e</td>
<td>SB540</td>
<td>1597</td>
</tr>
<tr>
<td>11</td>
<td>10</td>
<td>25*</td>
<td>SB540</td>
<td>1597</td>
</tr>
<tr>
<td>11</td>
<td>13 A</td>
<td>3 b</td>
<td>HB2931</td>
<td>1637</td>
</tr>
<tr>
<td>11</td>
<td>13 Q</td>
<td>22</td>
<td>SB540</td>
<td>1598</td>
</tr>
<tr>
<td>11</td>
<td>13 V</td>
<td>4</td>
<td>HB2931</td>
<td>1638</td>
</tr>
<tr>
<td>11</td>
<td>13 X</td>
<td>3</td>
<td>SB610</td>
<td>1599</td>
</tr>
<tr>
<td>11</td>
<td>13 X</td>
<td>5</td>
<td>SB610</td>
<td>1599</td>
</tr>
<tr>
<td>11</td>
<td>13 X</td>
<td>6</td>
<td>SB610</td>
<td>1599</td>
</tr>
<tr>
<td>11</td>
<td>13 X</td>
<td>8</td>
<td>SB610</td>
<td>1599</td>
</tr>
<tr>
<td>11</td>
<td>13 X</td>
<td>9</td>
<td>SB610</td>
<td>1599</td>
</tr>
<tr>
<td>11</td>
<td>13 X</td>
<td>13</td>
<td>SB610</td>
<td>1599</td>
</tr>
<tr>
<td>11</td>
<td>13 Z*</td>
<td>1</td>
<td>HB2535</td>
<td>1642</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>HB2535</td>
<td>1642</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>HB2535</td>
<td>1643</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>3 c</td>
<td>SB540</td>
<td>1601</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>6</td>
<td>HB2999</td>
<td>1644</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>9 i</td>
<td>SB533</td>
<td>1654</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>91*</td>
<td>HB3017</td>
<td>1682</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>9 m*</td>
<td>SB540</td>
<td>1608</td>
</tr>
<tr>
<td>11</td>
<td>15 A</td>
<td>18</td>
<td>HB2999</td>
<td>1644</td>
</tr>
<tr>
<td>11</td>
<td>15 B</td>
<td>2</td>
<td>SB533</td>
<td>1655</td>
</tr>
<tr>
<td>11</td>
<td>15 B</td>
<td>21</td>
<td>HB2999</td>
<td>1645</td>
</tr>
<tr>
<td>11</td>
<td>15 B</td>
<td>24</td>
<td>HB2999</td>
<td>1646</td>
</tr>
<tr>
<td>11</td>
<td>15 B</td>
<td>28</td>
<td>HB2999</td>
<td>1649</td>
</tr>
<tr>
<td>11</td>
<td>15 B</td>
<td>32</td>
<td>SB533</td>
<td>1681</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>HB2999</td>
<td>1653</td>
</tr>
<tr>
<td>11</td>
<td>16</td>
<td>3</td>
<td>HB2719</td>
<td>1333</td>
</tr>
<tr>
<td>11</td>
<td>16</td>
<td>19</td>
<td>HB2877</td>
<td>1274</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>3</td>
<td>HB2401</td>
<td>1684</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>9</td>
<td>SB329</td>
<td>1686</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>21</td>
<td>SB540</td>
<td>1608</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>22</td>
<td>SB540</td>
<td>1610</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>23</td>
<td>SB540</td>
<td>1611</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>3</td>
<td>SB416</td>
<td>1688</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## INDEX

**CODE AMENDED - (Continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>24</td>
<td>3 a</td>
<td>SB540</td>
<td>1613</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>4 b</td>
<td>SB540</td>
<td>1628</td>
</tr>
<tr>
<td>11</td>
<td>27</td>
<td>16</td>
<td>SB724</td>
<td>1690</td>
</tr>
<tr>
<td>11 A</td>
<td>3</td>
<td>24</td>
<td>SB468</td>
<td>1266</td>
</tr>
<tr>
<td>12</td>
<td>1 A</td>
<td>4</td>
<td>HB3155</td>
<td>1570</td>
</tr>
<tr>
<td>12</td>
<td>1 A</td>
<td>6</td>
<td>HB3155</td>
<td>1571</td>
</tr>
<tr>
<td>12</td>
<td>1 A</td>
<td>7*</td>
<td>HB3155</td>
<td>1572</td>
</tr>
<tr>
<td>12</td>
<td>1 A</td>
<td>8*</td>
<td>HB3155</td>
<td>1573</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>4</td>
<td>SB243</td>
<td>347</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>14</td>
<td>SB243</td>
<td>349</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>15</td>
<td>SB243</td>
<td>350</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>15 a</td>
<td>SB243</td>
<td>350</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>16</td>
<td>SB243</td>
<td>351</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>17</td>
<td>SB243</td>
<td>352</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>19</td>
<td>SB243</td>
<td>352</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>21</td>
<td>SB243</td>
<td>352</td>
</tr>
<tr>
<td>14</td>
<td>2 A</td>
<td>3</td>
<td>SB451</td>
<td>532</td>
</tr>
<tr>
<td>14</td>
<td>2 A</td>
<td>14</td>
<td>SB451</td>
<td>538</td>
</tr>
<tr>
<td>15</td>
<td>1 B</td>
<td>22</td>
<td>SB756</td>
<td>1484</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>53*</td>
<td>SB706</td>
<td>1490</td>
</tr>
<tr>
<td>15</td>
<td>2 D</td>
<td>3</td>
<td>SB318</td>
<td>1486</td>
</tr>
<tr>
<td>15</td>
<td>3 A</td>
<td>7</td>
<td>HB2504</td>
<td>1564</td>
</tr>
<tr>
<td>15</td>
<td>3 B*</td>
<td>1</td>
<td>HB2504</td>
<td>1565</td>
</tr>
<tr>
<td>15</td>
<td>3 B*</td>
<td>2</td>
<td>HB2504</td>
<td>1565</td>
</tr>
<tr>
<td>15</td>
<td>3 B*</td>
<td>3</td>
<td>HB2504</td>
<td>1566</td>
</tr>
<tr>
<td>15</td>
<td>3 B*</td>
<td>4</td>
<td>HB2504</td>
<td>1567</td>
</tr>
<tr>
<td>15</td>
<td>3 B*</td>
<td>5</td>
<td>HB2504</td>
<td>1568</td>
</tr>
<tr>
<td>15</td>
<td>3 B*</td>
<td>6</td>
<td>HB2504</td>
<td>1569</td>
</tr>
<tr>
<td>15</td>
<td>5</td>
<td>28*</td>
<td>SB694</td>
<td>1492</td>
</tr>
<tr>
<td>15</td>
<td>5 B</td>
<td>3 a*</td>
<td>SB279</td>
<td>1499</td>
</tr>
<tr>
<td>16</td>
<td>1</td>
<td>4</td>
<td>HB3195</td>
<td>929</td>
</tr>
<tr>
<td>16</td>
<td>1 A</td>
<td>1</td>
<td>HB2885</td>
<td>940</td>
</tr>
<tr>
<td>16</td>
<td>1 A</td>
<td>3</td>
<td>HB2885</td>
<td>941</td>
</tr>
<tr>
<td>16</td>
<td>1 A</td>
<td>4</td>
<td>HB2885</td>
<td>942</td>
</tr>
<tr>
<td>16</td>
<td>1 A</td>
<td>5*</td>
<td>HB2885</td>
<td>943</td>
</tr>
<tr>
<td>16</td>
<td>2 D</td>
<td>2</td>
<td>SB321</td>
<td>947</td>
</tr>
<tr>
<td>16</td>
<td>2 D</td>
<td>3</td>
<td>SB321</td>
<td>957</td>
</tr>
<tr>
<td>16</td>
<td>2 D</td>
<td>4</td>
<td>SB321</td>
<td>960</td>
</tr>
<tr>
<td>16</td>
<td>2 D</td>
<td>5</td>
<td>SB321</td>
<td>967</td>
</tr>
<tr>
<td>16</td>
<td>2 D</td>
<td>7</td>
<td>SB321</td>
<td>974</td>
</tr>
<tr>
<td>16</td>
<td>2 J</td>
<td>3</td>
<td>SB669</td>
<td>982</td>
</tr>
<tr>
<td>16</td>
<td>2 J</td>
<td>7</td>
<td>SB669</td>
<td>982</td>
</tr>
<tr>
<td>16</td>
<td>4 C</td>
<td>6</td>
<td>HB2916</td>
<td>986</td>
</tr>
<tr>
<td>16</td>
<td>4 C</td>
<td>6 b</td>
<td>HB2916</td>
<td>988</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>4</td>
<td>C</td>
<td>HB2916</td>
<td>989</td>
</tr>
<tr>
<td>16</td>
<td>4</td>
<td>E*</td>
<td>SB307</td>
<td>993</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SB307</td>
<td>993</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SB307</td>
<td>994</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SB307</td>
<td>995</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SB307</td>
<td>995</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SB307</td>
<td>995</td>
</tr>
<tr>
<td>16</td>
<td>5</td>
<td>K</td>
<td>HB3336</td>
<td>997</td>
</tr>
<tr>
<td>16</td>
<td>5</td>
<td>K</td>
<td>HB3336</td>
<td>999</td>
</tr>
<tr>
<td>16</td>
<td>9</td>
<td>A</td>
<td>HB2360</td>
<td>100i</td>
</tr>
<tr>
<td>16</td>
<td>21</td>
<td>1</td>
<td>HB3083</td>
<td>336</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>907</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>909</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>910</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>911</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>914</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>914</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>918</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>920</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>921</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>924</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>H</td>
<td>SB414</td>
<td>928</td>
</tr>
<tr>
<td>16</td>
<td>42</td>
<td>3</td>
<td>SB687</td>
<td>1003</td>
</tr>
<tr>
<td>16</td>
<td>42</td>
<td>5</td>
<td>SB687</td>
<td>1005</td>
</tr>
<tr>
<td>16</td>
<td>42</td>
<td>6</td>
<td>SB687</td>
<td>1005</td>
</tr>
<tr>
<td>16</td>
<td>42</td>
<td>7</td>
<td>SB687</td>
<td>1006</td>
</tr>
<tr>
<td>17</td>
<td>2</td>
<td>D</td>
<td>HB2753</td>
<td>550</td>
</tr>
<tr>
<td>17</td>
<td>2</td>
<td>D</td>
<td>HB2753</td>
<td>550</td>
</tr>
<tr>
<td>17</td>
<td>2</td>
<td>D</td>
<td>HB2753</td>
<td>552</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>1</td>
<td>SB472</td>
<td>5</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>6</td>
<td>SB472</td>
<td>6</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>7</td>
<td>SB472</td>
<td>6</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>8</td>
<td>SB472</td>
<td>7</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>9</td>
<td>SB472</td>
<td>8</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>10</td>
<td>SB472</td>
<td>8</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>11</td>
<td>SB472</td>
<td>9</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
<td>13</td>
<td>SB472</td>
<td>9</td>
</tr>
<tr>
<td>17</td>
<td>A</td>
<td>3</td>
<td>SB12</td>
<td>1283</td>
</tr>
<tr>
<td>17</td>
<td>A</td>
<td>10</td>
<td>SB12</td>
<td>1286</td>
</tr>
<tr>
<td>17</td>
<td>B</td>
<td>2</td>
<td>SB398</td>
<td>583</td>
</tr>
<tr>
<td>17</td>
<td>B</td>
<td>3</td>
<td>SB556</td>
<td>579</td>
</tr>
<tr>
<td>17</td>
<td>F</td>
<td>1</td>
<td>HB3240</td>
<td>32</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>E</td>
<td>HB3208</td>
<td>610</td>
</tr>
<tr>
<td>18</td>
<td>4</td>
<td>1</td>
<td>HB3208</td>
<td>614</td>
</tr>
<tr>
<td>18</td>
<td>4</td>
<td>4</td>
<td>HB3208</td>
<td>615</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>5</td>
<td>1 a</td>
<td>HB3208</td>
<td>616</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>44</td>
<td>SB498</td>
<td>359</td>
</tr>
<tr>
<td>18</td>
<td>7 A</td>
<td>3</td>
<td>HB2703</td>
<td>1537</td>
</tr>
<tr>
<td>18</td>
<td>7 A</td>
<td>13</td>
<td>HB2703</td>
<td>1542</td>
</tr>
<tr>
<td>18</td>
<td>7 A</td>
<td>14</td>
<td>HB2703</td>
<td>1543</td>
</tr>
<tr>
<td>18</td>
<td>7 A</td>
<td>23</td>
<td>HB2703</td>
<td>1545</td>
</tr>
<tr>
<td>18</td>
<td>7 A</td>
<td>28 c</td>
<td>HB2703</td>
<td>1547</td>
</tr>
<tr>
<td>18</td>
<td>7 D</td>
<td>5</td>
<td>HB2870</td>
<td>1554</td>
</tr>
<tr>
<td>18</td>
<td>7 D</td>
<td>6</td>
<td>HB2870</td>
<td>1557</td>
</tr>
<tr>
<td>18</td>
<td>7 D</td>
<td>11</td>
<td>HB2734</td>
<td>1560</td>
</tr>
<tr>
<td>18</td>
<td>9</td>
<td>6</td>
<td>HB3313</td>
<td>621</td>
</tr>
<tr>
<td>18</td>
<td>9 A</td>
<td>2</td>
<td>HB2530</td>
<td>626</td>
</tr>
<tr>
<td>18</td>
<td>9 A</td>
<td>2 a</td>
<td>SB540</td>
<td>1633</td>
</tr>
<tr>
<td>18</td>
<td>9 A</td>
<td>3 a</td>
<td>HB2530</td>
<td>630</td>
</tr>
<tr>
<td>18</td>
<td>9 A</td>
<td>9</td>
<td>HB2530</td>
<td>632</td>
</tr>
<tr>
<td>18</td>
<td>10 A</td>
<td>15</td>
<td>SB493</td>
<td>1510</td>
</tr>
<tr>
<td>18</td>
<td>10 M</td>
<td>6</td>
<td>HB2913</td>
<td>1042</td>
</tr>
<tr>
<td>18</td>
<td>30</td>
<td>6</td>
<td>HB3295</td>
<td>1700</td>
</tr>
<tr>
<td>18 A</td>
<td>4</td>
<td>8 b</td>
<td>HB3146</td>
<td>634</td>
</tr>
<tr>
<td>18 A</td>
<td>4</td>
<td>17</td>
<td>HB3146</td>
<td>642</td>
</tr>
<tr>
<td>18 B</td>
<td>1 D</td>
<td>9*</td>
<td>SB373</td>
<td>647</td>
</tr>
<tr>
<td>18 B</td>
<td>1 D</td>
<td>10*</td>
<td>HB3340</td>
<td>688</td>
</tr>
<tr>
<td>18 B</td>
<td>2 A</td>
<td>1</td>
<td>SB373</td>
<td>649</td>
</tr>
<tr>
<td>18 B</td>
<td>10</td>
<td>7</td>
<td>HB2335</td>
<td>694</td>
</tr>
<tr>
<td>18 B</td>
<td>10</td>
<td>7 c*</td>
<td>HB2335</td>
<td>697</td>
</tr>
<tr>
<td>18 B</td>
<td>17</td>
<td>2</td>
<td>HB2904</td>
<td>699</td>
</tr>
<tr>
<td>18 B</td>
<td>17</td>
<td>3</td>
<td>HB2904</td>
<td>701</td>
</tr>
<tr>
<td>18 B</td>
<td>18 B*</td>
<td>1</td>
<td>HB3229</td>
<td>703</td>
</tr>
<tr>
<td>18 B</td>
<td>18 B*</td>
<td>2</td>
<td>HB3229</td>
<td>706</td>
</tr>
<tr>
<td>18 C</td>
<td>1</td>
<td>1</td>
<td>SB373</td>
<td>655</td>
</tr>
<tr>
<td>18 C</td>
<td>1</td>
<td>4</td>
<td>SB373</td>
<td>658</td>
</tr>
<tr>
<td>18 C</td>
<td>1</td>
<td>5</td>
<td>SB373</td>
<td>659</td>
</tr>
<tr>
<td>18 C</td>
<td>7</td>
<td>3</td>
<td>SB373</td>
<td>663</td>
</tr>
<tr>
<td>18 C</td>
<td>7</td>
<td>4</td>
<td>SB373</td>
<td>664</td>
</tr>
<tr>
<td>18 C</td>
<td>7</td>
<td>5</td>
<td>SB373</td>
<td>664</td>
</tr>
<tr>
<td>18 C</td>
<td>7</td>
<td>6</td>
<td>SB373</td>
<td>668</td>
</tr>
<tr>
<td>18 C</td>
<td>7</td>
<td>7</td>
<td>SB373</td>
<td>673</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>28</td>
<td>HB2690</td>
<td>12</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>29</td>
<td>HB2690</td>
<td>13</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>30</td>
<td>HB2690</td>
<td>14</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>31</td>
<td>HB2690</td>
<td>15</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>32</td>
<td>HB2690</td>
<td>15</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>33</td>
<td>HB2690</td>
<td>16</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>9</td>
<td>34</td>
<td>HB2690</td>
<td>17</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>34 a</td>
<td>HB2690</td>
<td>18</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>35</td>
<td>HB2690</td>
<td>18</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>36</td>
<td>HB2690</td>
<td>19</td>
</tr>
<tr>
<td>19</td>
<td>18</td>
<td>1</td>
<td>HB2541</td>
<td>21</td>
</tr>
<tr>
<td>19</td>
<td>20</td>
<td>8</td>
<td>SB501</td>
<td>39</td>
</tr>
<tr>
<td>19</td>
<td>21 A</td>
<td>6</td>
<td>SB445</td>
<td>22</td>
</tr>
<tr>
<td>19</td>
<td>29</td>
<td>6*</td>
<td>HB2474</td>
<td>24</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>22</td>
<td>SB346</td>
<td>1316</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>22 a</td>
<td>HB3063</td>
<td>1028</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>46 f*</td>
<td>HB2795</td>
<td>1034</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>57</td>
<td>HB2695</td>
<td>1037</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>57 a*</td>
<td>HB2695</td>
<td>1037</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>57 b*</td>
<td>HB2695</td>
<td>1039</td>
</tr>
<tr>
<td>20</td>
<td>15</td>
<td>1</td>
<td>SB470</td>
<td>1312</td>
</tr>
<tr>
<td>20</td>
<td>15</td>
<td>2</td>
<td>SB470</td>
<td>1312</td>
</tr>
<tr>
<td>20</td>
<td>15</td>
<td>3</td>
<td>SB470</td>
<td>1313</td>
</tr>
<tr>
<td>20</td>
<td>15</td>
<td>4</td>
<td>SB470</td>
<td>1314</td>
</tr>
<tr>
<td>20</td>
<td>15</td>
<td>5</td>
<td>SB470</td>
<td>1316</td>
</tr>
<tr>
<td>20</td>
<td>15</td>
<td>6</td>
<td>SB470</td>
<td>1319</td>
</tr>
<tr>
<td>21</td>
<td>1 D</td>
<td>2</td>
<td>HB2771</td>
<td>27</td>
</tr>
<tr>
<td>21</td>
<td>1 D</td>
<td>5 a*</td>
<td>HB2771</td>
<td>30</td>
</tr>
<tr>
<td>21</td>
<td>1 D</td>
<td>7 b*</td>
<td>HB2771</td>
<td>30</td>
</tr>
<tr>
<td>21</td>
<td>1 D</td>
<td>8</td>
<td>HB2771</td>
<td>31</td>
</tr>
<tr>
<td>21</td>
<td>3 C</td>
<td>10 a</td>
<td>HB3066</td>
<td>738</td>
</tr>
<tr>
<td>21</td>
<td>3 D</td>
<td>1</td>
<td>HB3076</td>
<td>1191</td>
</tr>
<tr>
<td>21</td>
<td>3 D</td>
<td>2</td>
<td>HB3076</td>
<td>1192</td>
</tr>
<tr>
<td>21</td>
<td>3 D</td>
<td>3</td>
<td>HB3076</td>
<td>1194</td>
</tr>
<tr>
<td>21</td>
<td>3 D</td>
<td>4</td>
<td>HB3076</td>
<td>1196</td>
</tr>
<tr>
<td>21</td>
<td>3 D</td>
<td>7</td>
<td>HB3076</td>
<td>1198</td>
</tr>
<tr>
<td>21 A</td>
<td>1</td>
<td>4</td>
<td>SB246</td>
<td>1708</td>
</tr>
<tr>
<td>21 A</td>
<td>1 A</td>
<td>5</td>
<td>SB246</td>
<td>1710</td>
</tr>
<tr>
<td>21 A</td>
<td>1 A</td>
<td>6</td>
<td>SB246</td>
<td>1710</td>
</tr>
<tr>
<td>21 A</td>
<td>1 A</td>
<td>7</td>
<td>SB246</td>
<td>1710</td>
</tr>
<tr>
<td>21 A</td>
<td>1 A</td>
<td>28</td>
<td>SB246</td>
<td>1710</td>
</tr>
<tr>
<td>21 A</td>
<td>6</td>
<td>1</td>
<td>SB246</td>
<td>1715</td>
</tr>
<tr>
<td>21 A</td>
<td>6</td>
<td>1 c</td>
<td>SB540</td>
<td>1634</td>
</tr>
<tr>
<td>21 A</td>
<td>6</td>
<td>3</td>
<td>SB246</td>
<td>1716</td>
</tr>
<tr>
<td>21 A</td>
<td>6</td>
<td>10</td>
<td>SB246</td>
<td>1723</td>
</tr>
<tr>
<td>22</td>
<td>3</td>
<td>8</td>
<td>SB436</td>
<td>741</td>
</tr>
<tr>
<td>22</td>
<td>3</td>
<td>11</td>
<td>SB600</td>
<td>1692</td>
</tr>
<tr>
<td>22</td>
<td>11</td>
<td>4</td>
<td>HB2860</td>
<td>744</td>
</tr>
<tr>
<td>22</td>
<td>11</td>
<td>6</td>
<td>SB461</td>
<td>769</td>
</tr>
<tr>
<td>22</td>
<td>11</td>
<td>22</td>
<td>HB2860</td>
<td>751</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>11</td>
<td>24</td>
<td>HB2860</td>
<td>753</td>
</tr>
<tr>
<td>22</td>
<td>11</td>
<td>25</td>
<td>HB2860</td>
<td>754</td>
</tr>
<tr>
<td>22</td>
<td>11</td>
<td>30*</td>
<td>SB715</td>
<td>355</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>1</td>
<td>HB2860</td>
<td>755</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>2</td>
<td>HB2860</td>
<td>758</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>3</td>
<td>HB2860</td>
<td>759</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>4</td>
<td>HB2860</td>
<td>760</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>5</td>
<td>HB2860</td>
<td>762</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>6</td>
<td>HB2860</td>
<td>764</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>7</td>
<td>HB2860</td>
<td>766</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>8</td>
<td>HB2860</td>
<td>768</td>
</tr>
<tr>
<td>22</td>
<td>11 A</td>
<td>9</td>
<td>HB2860</td>
<td>768</td>
</tr>
<tr>
<td>22</td>
<td>15</td>
<td>22</td>
<td>HB2474</td>
<td>24</td>
</tr>
<tr>
<td>22</td>
<td>16</td>
<td>12</td>
<td>HB3339</td>
<td>771</td>
</tr>
<tr>
<td>22</td>
<td>21</td>
<td>6</td>
<td>SB613</td>
<td>775</td>
</tr>
<tr>
<td>22</td>
<td>21</td>
<td>15</td>
<td>SB613</td>
<td>780</td>
</tr>
<tr>
<td>22</td>
<td>21</td>
<td>16</td>
<td>SB613</td>
<td>782</td>
</tr>
<tr>
<td>22</td>
<td>21</td>
<td>17</td>
<td>SB613</td>
<td>783</td>
</tr>
<tr>
<td>22 C</td>
<td>1</td>
<td>5</td>
<td>HB2863</td>
<td>1764</td>
</tr>
<tr>
<td>23</td>
<td>2</td>
<td>1d</td>
<td>SB537</td>
<td>1776</td>
</tr>
<tr>
<td>23</td>
<td>2 A</td>
<td>1</td>
<td>SB537</td>
<td>1781</td>
</tr>
<tr>
<td>23</td>
<td>2 C</td>
<td>3</td>
<td>SB246</td>
<td>1733</td>
</tr>
<tr>
<td>23</td>
<td>2 C</td>
<td>8</td>
<td>SB537</td>
<td>1783</td>
</tr>
<tr>
<td>23</td>
<td>2 C</td>
<td>15</td>
<td>SB537</td>
<td>1787</td>
</tr>
<tr>
<td>23</td>
<td>2 C</td>
<td>17</td>
<td>SB537</td>
<td>1789</td>
</tr>
<tr>
<td>23</td>
<td>2 C</td>
<td>21</td>
<td>SB537</td>
<td>1791</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>1c</td>
<td>SB537</td>
<td>1793</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>6 b</td>
<td>SB537</td>
<td>1799</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>8</td>
<td>SB537</td>
<td>1802</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>8 c</td>
<td>SB537</td>
<td>1803</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>8 d*</td>
<td>SB537</td>
<td>1806</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>15 b</td>
<td>SB537</td>
<td>1806</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>1</td>
<td>SB537</td>
<td>1809</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>3</td>
<td>SB537</td>
<td>1813</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>16</td>
<td>SB537</td>
<td>1813</td>
</tr>
<tr>
<td>24</td>
<td>1</td>
<td>9</td>
<td>SB453</td>
<td>1505</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>11</td>
<td>HB2863</td>
<td>1767</td>
</tr>
<tr>
<td>24 A</td>
<td>2</td>
<td>4 b*</td>
<td>SB641</td>
<td>1574</td>
</tr>
<tr>
<td>24 B</td>
<td>5</td>
<td>3</td>
<td>SB306</td>
<td>1508</td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>3 a</td>
<td>HB2407</td>
<td>419</td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>3 b</td>
<td>HB2407</td>
<td>422</td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>17</td>
<td>SB263</td>
<td>425</td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>18</td>
<td>SB263</td>
<td>427</td>
</tr>
<tr>
<td>25</td>
<td>4</td>
<td>6</td>
<td>SB99</td>
<td>430</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>7*</td>
<td>1</td>
<td>SB280</td>
<td>433</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>SB280</td>
<td>434</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>SB280</td>
<td>434</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>SB280</td>
<td>435</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>SB280</td>
<td>435</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6</td>
<td>SB280</td>
<td>436</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>SB280</td>
<td>436</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8</td>
<td>SB280</td>
<td>437</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>SB280</td>
<td>437</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>SB280</td>
<td>437</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11</td>
<td>SB280</td>
<td>437</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12</td>
<td>SB280</td>
<td>437</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13</td>
<td>SB280</td>
<td>438</td>
</tr>
<tr>
<td></td>
<td></td>
<td>14</td>
<td>SB280</td>
<td>440</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15</td>
<td>SB280</td>
<td>440</td>
</tr>
<tr>
<td></td>
<td></td>
<td>16</td>
<td>SB280</td>
<td>442</td>
</tr>
<tr>
<td>27</td>
<td>7</td>
<td>4</td>
<td>SB344</td>
<td>1271</td>
</tr>
<tr>
<td>27</td>
<td>17</td>
<td>1</td>
<td>SB687</td>
<td>1006</td>
</tr>
<tr>
<td>29</td>
<td>1</td>
<td>8</td>
<td>SB262</td>
<td>1008</td>
</tr>
<tr>
<td>29</td>
<td>1</td>
<td>11</td>
<td>SB335</td>
<td>790</td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>5 b</td>
<td>HB2976</td>
<td>1575</td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>5 c</td>
<td>HB2968</td>
<td>1579</td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>16 d</td>
<td>HB2968</td>
<td>1580</td>
</tr>
<tr>
<td>29</td>
<td>3 A</td>
<td>1</td>
<td>SB384</td>
<td>802</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>2</td>
<td>SB587</td>
<td>1581</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>7</td>
<td>SB487</td>
<td>1320</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>24</td>
<td>SB473</td>
<td>1395</td>
</tr>
<tr>
<td>29</td>
<td>18</td>
<td>6</td>
<td>SB382</td>
<td>1584</td>
</tr>
<tr>
<td>29</td>
<td>22</td>
<td>18 a</td>
<td>SB373</td>
<td>675</td>
</tr>
<tr>
<td>29</td>
<td>22</td>
<td>29*</td>
<td>SB575</td>
<td>819</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>1*</td>
<td>SB575</td>
<td>820</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>2*</td>
<td>SB575</td>
<td>822</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>3*</td>
<td>SB575</td>
<td>829</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>5*</td>
<td>SB575</td>
<td>831</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>6*</td>
<td>SB575</td>
<td>831</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>8*</td>
<td>SB575</td>
<td>832</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>9*</td>
<td>SB575</td>
<td>832</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>11*</td>
<td>SB575</td>
<td>839</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>12*</td>
<td>SB575</td>
<td>841</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>13*</td>
<td>SB575</td>
<td>842</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>16*</td>
<td>SB575</td>
<td>844</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>17*</td>
<td>SB575</td>
<td>845</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>18*</td>
<td>SB575</td>
<td>845</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>19*</td>
<td>SB575</td>
<td>847</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## INDEX

### CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>25</td>
<td>20*</td>
<td>SB575</td>
<td>848</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>21*</td>
<td>SB575</td>
<td>849</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>22*</td>
<td>SB575</td>
<td>852</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>22 a*</td>
<td>SB575</td>
<td>854</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>23*</td>
<td>SB575</td>
<td>856</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>24*</td>
<td>SB575</td>
<td>858</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>25*</td>
<td>SB575</td>
<td>859</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>26*</td>
<td>SB575</td>
<td>865</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>28*</td>
<td>SB575</td>
<td>866</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>29*</td>
<td>SB575</td>
<td>866</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>30*</td>
<td>SB575</td>
<td>868</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>31*</td>
<td>SB575</td>
<td>874</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>32*</td>
<td>SB575</td>
<td>876</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>33*</td>
<td>SB575</td>
<td>876</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>34*</td>
<td>SB575</td>
<td>879</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>35*</td>
<td>SB575</td>
<td>879</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>36*</td>
<td>SB575</td>
<td>879</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>37*</td>
<td>SB575</td>
<td>880</td>
</tr>
<tr>
<td>29</td>
<td>25</td>
<td>38*</td>
<td>SB575</td>
<td>880</td>
</tr>
<tr>
<td>29</td>
<td>26</td>
<td>1</td>
<td>SB259</td>
<td>451</td>
</tr>
<tr>
<td>29 A</td>
<td>2</td>
<td>6</td>
<td>HB2567</td>
<td>1</td>
</tr>
<tr>
<td>29 B</td>
<td>1</td>
<td>4</td>
<td>HB2418</td>
<td>813</td>
</tr>
<tr>
<td>30</td>
<td>1</td>
<td>19*</td>
<td>HB2539</td>
<td>1325</td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>7</td>
<td>HB2801</td>
<td>1327</td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>13</td>
<td>SB293</td>
<td>1330</td>
</tr>
<tr>
<td>30</td>
<td>3 A</td>
<td>1</td>
<td>HB2839</td>
<td>1335</td>
</tr>
<tr>
<td>30</td>
<td>3 A</td>
<td>2</td>
<td>HB2839</td>
<td>1336</td>
</tr>
<tr>
<td>30</td>
<td>10 A</td>
<td>4</td>
<td>SB501</td>
<td>41</td>
</tr>
<tr>
<td>30</td>
<td>10 A</td>
<td>6</td>
<td>SB501</td>
<td>42</td>
</tr>
<tr>
<td>30</td>
<td>10 A</td>
<td>8</td>
<td>SB501</td>
<td>43</td>
</tr>
<tr>
<td>30</td>
<td>14</td>
<td>1</td>
<td>SB526</td>
<td>1339</td>
</tr>
<tr>
<td>30</td>
<td>14</td>
<td>2</td>
<td>SB526</td>
<td>1339</td>
</tr>
<tr>
<td>30</td>
<td>14</td>
<td>4</td>
<td>SB526</td>
<td>1340</td>
</tr>
<tr>
<td>30</td>
<td>14</td>
<td>5</td>
<td>SB526</td>
<td>1342</td>
</tr>
<tr>
<td>30</td>
<td>14</td>
<td>6</td>
<td>SB526</td>
<td>1342</td>
</tr>
<tr>
<td>30</td>
<td>14</td>
<td>10</td>
<td>SB526</td>
<td>1343</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>1</td>
<td>HB2528</td>
<td>1346</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>2</td>
<td>HB2528</td>
<td>1346</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>3</td>
<td>HB2528</td>
<td>1347</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>4</td>
<td>HB2528</td>
<td>1348</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>5</td>
<td>HB2528</td>
<td>1350</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>6</td>
<td>HB2528</td>
<td>1352</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>7</td>
<td>HB2528</td>
<td>1353</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>8</td>
<td>HB2528</td>
<td>1354</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>19</td>
<td>9</td>
<td>HB2528</td>
<td>1355</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>10</td>
<td>HB2528</td>
<td>1355</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>11</td>
<td>HB2528</td>
<td>1355</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>12*</td>
<td>HB2528</td>
<td>1356</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>13*</td>
<td>HB2528</td>
<td>1357</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>14*</td>
<td>HB2528</td>
<td>1359</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>15*</td>
<td>HB2528</td>
<td>1360</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>16*</td>
<td>HB2528</td>
<td>1360</td>
</tr>
<tr>
<td>30</td>
<td>19</td>
<td>17*</td>
<td>HB2528</td>
<td>1361</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>4</td>
<td>HB2423</td>
<td>1362</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>5</td>
<td>HB2423</td>
<td>1365</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>6</td>
<td>HB2423</td>
<td>1368</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>9</td>
<td>HB2423</td>
<td>1370</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>10</td>
<td>HB2423</td>
<td>1371</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>12</td>
<td>HB2423</td>
<td>1373</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>13</td>
<td>HB2423</td>
<td>1373</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>14</td>
<td>HB2423</td>
<td>1373</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>16</td>
<td>HB2423</td>
<td>1374</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>17</td>
<td>HB2423</td>
<td>1378</td>
</tr>
<tr>
<td>30</td>
<td>23</td>
<td>19</td>
<td>HB2423</td>
<td>1379</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>1</td>
<td>HB2531</td>
<td>1383</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>2</td>
<td>HB2531</td>
<td>1383</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>3</td>
<td>HB2531</td>
<td>1383</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>4</td>
<td>HB2531</td>
<td>1388</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>5</td>
<td>HB2531</td>
<td>1391</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>6</td>
<td>HB2531</td>
<td>1394</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>7</td>
<td>HB2531</td>
<td>1395</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>8</td>
<td>HB2531</td>
<td>1396</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>9</td>
<td>HB2531</td>
<td>1397</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>10</td>
<td>HB2531</td>
<td>1398</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>11</td>
<td>HB2531</td>
<td>1399</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>12</td>
<td>HB2531</td>
<td>1400</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>13</td>
<td>HB2531</td>
<td>1401</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>14</td>
<td>HB2531</td>
<td>1401</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>15</td>
<td>HB2531</td>
<td>1401</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>16</td>
<td>HB2531</td>
<td>1403</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>17</td>
<td>HB2531</td>
<td>1404</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>18</td>
<td>HB2531</td>
<td>1406</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>19</td>
<td>HB2531</td>
<td>1406</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>20</td>
<td>HB2531</td>
<td>1407</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>21</td>
<td>HB2531</td>
<td>1410</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>22</td>
<td>HB2531</td>
<td>1411</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>23</td>
<td>HB2531</td>
<td>1411</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>24</td>
<td>HB2531</td>
<td>1411</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>1</td>
<td>HB2309</td>
<td>1414</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
INDEX

CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>28</td>
<td>2</td>
<td>HB2309</td>
<td>1414</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>3</td>
<td>HB2309</td>
<td>1414</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>4</td>
<td>HB2309</td>
<td>1414</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>5</td>
<td>HB2309</td>
<td>1421</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>6</td>
<td>HB2309</td>
<td>1423</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>7</td>
<td>HB2309</td>
<td>1425</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>8</td>
<td>HB2309</td>
<td>1426</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>9</td>
<td>HB2309</td>
<td>1426</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>10</td>
<td>HB2309</td>
<td>1427</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>11</td>
<td>HB2309</td>
<td>1428</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>12</td>
<td>HB2309</td>
<td>1428</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>13</td>
<td>HB2309</td>
<td>1429</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>14</td>
<td>HB2309</td>
<td>1430</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>15</td>
<td>HB2309</td>
<td>1430</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>16</td>
<td>HB2309</td>
<td>1433</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>17</td>
<td>HB2309</td>
<td>1437</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>18</td>
<td>HB2309</td>
<td>1437</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>19*</td>
<td>HB2309</td>
<td>1438</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>20*</td>
<td>HB2309</td>
<td>1438</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
<td>21*</td>
<td>HB2309</td>
<td>1438</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>1</td>
<td>HB2532</td>
<td>1440</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>2</td>
<td>HB2532</td>
<td>1440</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>3</td>
<td>HB2532</td>
<td>1441</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>4</td>
<td>HB2532</td>
<td>1442</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>5</td>
<td>HB2532</td>
<td>1445</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>6</td>
<td>HB2532</td>
<td>1447</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>7</td>
<td>HB2532</td>
<td>1448</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>8</td>
<td>HB2532</td>
<td>1448</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>9</td>
<td>HB2532</td>
<td>1451</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>10</td>
<td>HB2532</td>
<td>1454</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>11</td>
<td>HB2532</td>
<td>1455</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>12</td>
<td>HB2532</td>
<td>1457</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>13</td>
<td>HB2532</td>
<td>1459</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>14</td>
<td>HB2532</td>
<td>1460</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>15</td>
<td>HB2532</td>
<td>1460</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>16*</td>
<td>HB2532</td>
<td>1461</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>17*</td>
<td>HB2532</td>
<td>1461</td>
</tr>
<tr>
<td>31</td>
<td>15</td>
<td>6 c*</td>
<td>HB2950</td>
<td>1011</td>
</tr>
<tr>
<td>31</td>
<td>15 A</td>
<td>3</td>
<td>HB2863</td>
<td>1770</td>
</tr>
<tr>
<td>31</td>
<td>15 A</td>
<td>6</td>
<td>HB2865</td>
<td>1773</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>1</td>
<td>SB532</td>
<td>267</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>2</td>
<td>SB532</td>
<td>271</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>3</td>
<td>SB532</td>
<td>273</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>4</td>
<td>SB532</td>
<td>274</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>17</td>
<td>5</td>
<td>SB532</td>
<td>278</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>7</td>
<td>SB532</td>
<td>280</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>11</td>
<td>SB532</td>
<td>280</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>12</td>
<td>SB532</td>
<td>282</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>13</td>
<td>SB532</td>
<td>284</td>
</tr>
<tr>
<td>31</td>
<td>17</td>
<td>20</td>
<td>SB532</td>
<td>284</td>
</tr>
<tr>
<td>31</td>
<td>17 A*</td>
<td>1</td>
<td>SB532</td>
<td>285</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>SB532</td>
<td>286</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>SB532</td>
<td>290</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>SB532</td>
<td>292</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>SB532</td>
<td>294</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6</td>
<td>SB532</td>
<td>295</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>SB532</td>
<td>297</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8</td>
<td>SB532</td>
<td>298</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>SB532</td>
<td>299</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>SB532</td>
<td>301</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11</td>
<td>SB532</td>
<td>302</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12</td>
<td>SB532</td>
<td>302</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13</td>
<td>SB532</td>
<td>304</td>
</tr>
<tr>
<td></td>
<td></td>
<td>14</td>
<td>SB532</td>
<td>305</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15</td>
<td>SB532</td>
<td>306</td>
</tr>
<tr>
<td></td>
<td></td>
<td>16</td>
<td>SB532</td>
<td>310</td>
</tr>
<tr>
<td></td>
<td></td>
<td>17</td>
<td>SB532</td>
<td>312</td>
</tr>
<tr>
<td></td>
<td></td>
<td>18</td>
<td>SB532</td>
<td>312</td>
</tr>
<tr>
<td></td>
<td></td>
<td>19</td>
<td>SB532</td>
<td>312</td>
</tr>
<tr>
<td></td>
<td></td>
<td>20</td>
<td>SB532</td>
<td>312</td>
</tr>
<tr>
<td>31</td>
<td>20</td>
<td>5 d</td>
<td>HB2419</td>
<td>446</td>
</tr>
<tr>
<td>31</td>
<td>20</td>
<td>5 f*</td>
<td>HB2404</td>
<td>448</td>
</tr>
<tr>
<td>31 A</td>
<td>2</td>
<td>4 c*</td>
<td>HB3082</td>
<td>806</td>
</tr>
<tr>
<td>31 A</td>
<td>2 A</td>
<td>1</td>
<td>SB476</td>
<td>316</td>
</tr>
<tr>
<td>31 A</td>
<td>3</td>
<td>1</td>
<td>SB489</td>
<td>319</td>
</tr>
<tr>
<td>31 A</td>
<td>4 A</td>
<td>1</td>
<td>SB424</td>
<td>321</td>
</tr>
<tr>
<td>31 A</td>
<td>4 A</td>
<td>2</td>
<td>SB424</td>
<td>322</td>
</tr>
<tr>
<td>31 A</td>
<td>4 A</td>
<td>3</td>
<td>SB424</td>
<td>322</td>
</tr>
<tr>
<td>31 A</td>
<td>4 A</td>
<td>4</td>
<td>SB424</td>
<td>323</td>
</tr>
<tr>
<td>31 A</td>
<td>8</td>
<td>12</td>
<td>SB503</td>
<td>325</td>
</tr>
<tr>
<td>31 A</td>
<td>8</td>
<td>12 d</td>
<td>SB503</td>
<td>331</td>
</tr>
<tr>
<td>31 B</td>
<td>1</td>
<td>114*</td>
<td>HB3194</td>
<td>1562</td>
</tr>
<tr>
<td>33</td>
<td>2</td>
<td>11</td>
<td>SB494</td>
<td>1078</td>
</tr>
<tr>
<td>33</td>
<td>2</td>
<td>22</td>
<td>SB537</td>
<td>1814</td>
</tr>
<tr>
<td>33</td>
<td>6 A</td>
<td>1</td>
<td>SB631</td>
<td>1079</td>
</tr>
<tr>
<td>33</td>
<td>12</td>
<td>8 a*</td>
<td>SB434</td>
<td>1083</td>
</tr>
<tr>
<td>33</td>
<td>13 C</td>
<td>3</td>
<td>SB284</td>
<td>1086</td>
</tr>
<tr>
<td>33</td>
<td>13 C</td>
<td>16</td>
<td>SB284</td>
<td>1089</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>14</td>
<td>6*</td>
<td>SB495</td>
<td>1090</td>
</tr>
<tr>
<td>33</td>
<td>15</td>
<td>4j*</td>
<td>SB326</td>
<td>1058</td>
</tr>
<tr>
<td>33</td>
<td>15 E</td>
<td>15</td>
<td>SB278</td>
<td>1103</td>
</tr>
<tr>
<td>33</td>
<td>16</td>
<td>3 a</td>
<td>HB3288</td>
<td>1073</td>
</tr>
<tr>
<td>33</td>
<td>16</td>
<td>3 l*</td>
<td>SB326</td>
<td>1060</td>
</tr>
<tr>
<td>33</td>
<td>16</td>
<td>3 u*</td>
<td>SB552</td>
<td>1093</td>
</tr>
<tr>
<td>33</td>
<td>16 D</td>
<td>16</td>
<td>SB431</td>
<td>1105</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>1</td>
<td>SB552</td>
<td>1095</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>2</td>
<td>SB552</td>
<td>1096</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>3</td>
<td>SB552</td>
<td>1096</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>4</td>
<td>SB552</td>
<td>1097</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>5</td>
<td>SB552</td>
<td>1098</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>6</td>
<td>SB552</td>
<td>1099</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>7</td>
<td>SB552</td>
<td>1099</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>8</td>
<td>SB552</td>
<td>1101</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>9*</td>
<td>SB552</td>
<td>1102</td>
</tr>
<tr>
<td>33</td>
<td>16 F</td>
<td>10*</td>
<td>SB552</td>
<td>1102</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>7 j*</td>
<td>SB326</td>
<td>1062</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>8 h*</td>
<td>SB326</td>
<td>1064</td>
</tr>
<tr>
<td>33</td>
<td>25 A</td>
<td>8 i*</td>
<td>SB326</td>
<td>1066</td>
</tr>
<tr>
<td>33</td>
<td>25 D</td>
<td>2</td>
<td>HB2660</td>
<td>1111</td>
</tr>
<tr>
<td>33</td>
<td>26 A</td>
<td>3</td>
<td>HB3278</td>
<td>1118</td>
</tr>
<tr>
<td>33</td>
<td>26 A</td>
<td>5</td>
<td>HB3278</td>
<td>1127</td>
</tr>
<tr>
<td>33</td>
<td>26 A</td>
<td>6</td>
<td>HB3278</td>
<td>1134</td>
</tr>
<tr>
<td>33</td>
<td>26 A</td>
<td>8</td>
<td>HB3278</td>
<td>1135</td>
</tr>
<tr>
<td>33</td>
<td>26 A</td>
<td>9</td>
<td>HB3278</td>
<td>1149</td>
</tr>
<tr>
<td>33</td>
<td>26 A</td>
<td>10</td>
<td>HB3278</td>
<td>1154</td>
</tr>
<tr>
<td>33</td>
<td>26 A</td>
<td>18</td>
<td>HB3278</td>
<td>1156</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>1</td>
<td>HB2757</td>
<td>1158</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>2</td>
<td>HB2757</td>
<td>1160</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>3</td>
<td>HB2757</td>
<td>1163</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>4</td>
<td>HB2757</td>
<td>1163</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>5</td>
<td>HB2757</td>
<td>1165</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>6</td>
<td>HB2757</td>
<td>1166</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>8</td>
<td>HB2757</td>
<td>1172</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>9</td>
<td>HB2757</td>
<td>1173</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>10</td>
<td>HB2757</td>
<td>1174</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>10 a</td>
<td>HB2757</td>
<td>1174</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>11</td>
<td>HB2757</td>
<td>1176</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>12</td>
<td>HB2757</td>
<td>1177</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>13</td>
<td>HB2757</td>
<td>1180</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>14</td>
<td>HB2757</td>
<td>1181</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>15</td>
<td>HB2757</td>
<td>1182</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>16</td>
<td>HB2757</td>
<td>1185</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>48</td>
<td>7 b*</td>
<td>SB408</td>
<td>1188</td>
</tr>
<tr>
<td>33</td>
<td>48</td>
<td>8</td>
<td>SB408</td>
<td>1188</td>
</tr>
<tr>
<td>36</td>
<td>8</td>
<td>13</td>
<td>HB3295</td>
<td>1704</td>
</tr>
<tr>
<td>38</td>
<td>1</td>
<td>8 a*</td>
<td>HB3082</td>
<td>806</td>
</tr>
<tr>
<td>44</td>
<td>1</td>
<td>28</td>
<td>HB3295</td>
<td>1706</td>
</tr>
<tr>
<td>44</td>
<td>13</td>
<td>4 a*</td>
<td>HB3082</td>
<td>809</td>
</tr>
<tr>
<td>44 A</td>
<td>1</td>
<td>7</td>
<td>HB3170</td>
<td>883</td>
</tr>
<tr>
<td>44 A</td>
<td>1</td>
<td>9</td>
<td>HB3170</td>
<td>883</td>
</tr>
<tr>
<td>44 A</td>
<td>1</td>
<td>10</td>
<td>HB3170</td>
<td>885</td>
</tr>
<tr>
<td>44 A</td>
<td>1</td>
<td>14</td>
<td>HB3170</td>
<td>886</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>1</td>
<td>HB3170</td>
<td>887</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>5</td>
<td>HB3170</td>
<td>889</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>6</td>
<td>HB3170</td>
<td>889</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>7</td>
<td>HB3170</td>
<td>890</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>12</td>
<td>HB3170</td>
<td>892</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>13 a</td>
<td>HB3170</td>
<td>893</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>14</td>
<td>HB3170</td>
<td>894</td>
</tr>
<tr>
<td>44 A</td>
<td>2</td>
<td>15</td>
<td>HB3170</td>
<td>894</td>
</tr>
<tr>
<td>44 A</td>
<td>3</td>
<td>11</td>
<td>HB3170</td>
<td>895</td>
</tr>
<tr>
<td>44 A</td>
<td>4</td>
<td>1</td>
<td>HB3170</td>
<td>896</td>
</tr>
<tr>
<td>44 A</td>
<td>4</td>
<td>5</td>
<td>HB3170</td>
<td>899</td>
</tr>
<tr>
<td>44 B</td>
<td>4</td>
<td>409</td>
<td>HB2685</td>
<td>900</td>
</tr>
<tr>
<td>44 B</td>
<td>5</td>
<td>505</td>
<td>HB2685</td>
<td>1739</td>
</tr>
<tr>
<td>44 B</td>
<td>6</td>
<td>606*</td>
<td>HB2685</td>
<td>1741</td>
</tr>
<tr>
<td>44 C*</td>
<td>1</td>
<td>1</td>
<td>SB515</td>
<td>1742</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>SB515</td>
<td></td>
<td>1745</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>SB515</td>
<td></td>
<td>1745</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>SB515</td>
<td></td>
<td>1748</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>SB515</td>
<td></td>
<td>1748</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>SB515</td>
<td></td>
<td>1749</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>6</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>7</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>9</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>11</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>12</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
<tr>
<td>3</td>
<td>13</td>
<td>SB515</td>
<td></td>
<td>1750</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## INDEX

### CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>1</td>
<td></td>
<td>SB515</td>
<td>1760</td>
</tr>
<tr>
<td>2</td>
<td>SB515</td>
<td></td>
<td></td>
<td>1761</td>
</tr>
<tr>
<td>3</td>
<td>SB515</td>
<td></td>
<td></td>
<td>1761</td>
</tr>
<tr>
<td>46 A</td>
<td>4</td>
<td>102</td>
<td>SB532</td>
<td>312</td>
</tr>
<tr>
<td>46 A</td>
<td>4</td>
<td>111</td>
<td>SB425</td>
<td>418</td>
</tr>
<tr>
<td>46 A</td>
<td>6 A</td>
<td>2</td>
<td>HB2557</td>
<td>1290</td>
</tr>
<tr>
<td>46 A</td>
<td>6 A</td>
<td>3</td>
<td>HB2557</td>
<td>1291</td>
</tr>
<tr>
<td>46 A</td>
<td>6 A</td>
<td>3 a</td>
<td>HB2557</td>
<td>1292</td>
</tr>
<tr>
<td>47</td>
<td>25*</td>
<td>1</td>
<td>SB456</td>
<td>381</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>SB456</td>
<td></td>
<td>382</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>SB456</td>
<td></td>
<td>383</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>SB456</td>
<td></td>
<td>387</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>SB456</td>
<td></td>
<td>389</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>SB456</td>
<td></td>
<td>391</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>SB456</td>
<td></td>
<td>393</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>SB456</td>
<td></td>
<td>393</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>SB456</td>
<td></td>
<td>393</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>SB456</td>
<td></td>
<td>394</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>SB456</td>
<td></td>
<td>394</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>SB456</td>
<td></td>
<td>394</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>SB456</td>
<td></td>
<td>394</td>
</tr>
<tr>
<td>48</td>
<td>1</td>
<td>233.3*</td>
<td>HB2694</td>
<td>553</td>
</tr>
<tr>
<td>48</td>
<td>1</td>
<td>233.4*</td>
<td>HB2694</td>
<td>553</td>
</tr>
<tr>
<td>48</td>
<td>9</td>
<td>404*</td>
<td>HB2694</td>
<td>554</td>
</tr>
<tr>
<td>48</td>
<td>10</td>
<td>401</td>
<td>SB405</td>
<td>559</td>
</tr>
<tr>
<td>48</td>
<td>10</td>
<td>402</td>
<td>SB405</td>
<td>559</td>
</tr>
<tr>
<td>48</td>
<td>11</td>
<td>106</td>
<td>HB2694</td>
<td>555</td>
</tr>
<tr>
<td>48</td>
<td>11</td>
<td>108*</td>
<td>HB2694</td>
<td>557</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>505</td>
<td>HB2739</td>
<td>562</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>701</td>
<td>HB2739</td>
<td>563</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>802</td>
<td>HB2738</td>
<td>570</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>902</td>
<td>HB2739</td>
<td>563</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>903</td>
<td>HB2739</td>
<td>564</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>1002</td>
<td>HB2739</td>
<td>565</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>1003*</td>
<td>HB2739</td>
<td>567</td>
</tr>
<tr>
<td>48</td>
<td>27</td>
<td>1004*</td>
<td>HB2739</td>
<td>568</td>
</tr>
<tr>
<td>48</td>
<td>28</td>
<td>5</td>
<td>HB2738</td>
<td>570</td>
</tr>
<tr>
<td>49</td>
<td>1</td>
<td>4</td>
<td>HB2877</td>
<td>1276</td>
</tr>
<tr>
<td>49</td>
<td>2 E*</td>
<td>1</td>
<td>SB498</td>
<td>368</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>SB498</td>
<td></td>
<td>369</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>SB498</td>
<td></td>
<td>371</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>SB498</td>
<td></td>
<td>376</td>
</tr>
<tr>
<td>49</td>
<td>5 B</td>
<td>5 a*</td>
<td>HB2569</td>
<td>378</td>
</tr>
<tr>
<td>49</td>
<td>7</td>
<td>32</td>
<td>SB341</td>
<td>380</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>1</td>
<td>11</td>
<td>HB2305</td>
<td>471</td>
</tr>
<tr>
<td>51</td>
<td>1</td>
<td>21</td>
<td>HB2738</td>
<td>571</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1</td>
<td>SB338</td>
<td>472</td>
</tr>
<tr>
<td>59</td>
<td>1</td>
<td>10</td>
<td>SB528</td>
<td>465</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>HB3082</td>
<td>809</td>
</tr>
<tr>
<td>60</td>
<td>3 A</td>
<td>24</td>
<td>HB2877</td>
<td>1281</td>
</tr>
<tr>
<td>61</td>
<td>2</td>
<td>10 b</td>
<td>HB2566</td>
<td>481</td>
</tr>
<tr>
<td>61</td>
<td>2</td>
<td>29</td>
<td>HB2788</td>
<td>484</td>
</tr>
<tr>
<td>61</td>
<td>2</td>
<td>29 a*</td>
<td>HB2788</td>
<td>486</td>
</tr>
<tr>
<td>61</td>
<td>2</td>
<td>29 b*</td>
<td>HB2788</td>
<td>487</td>
</tr>
<tr>
<td>61</td>
<td>3</td>
<td>12</td>
<td>SB761</td>
<td>489</td>
</tr>
<tr>
<td>61</td>
<td>3</td>
<td>28</td>
<td>HB2536</td>
<td>492</td>
</tr>
<tr>
<td>61</td>
<td>3</td>
<td>29</td>
<td>SB761</td>
<td>490</td>
</tr>
<tr>
<td>61</td>
<td>3 B</td>
<td>3</td>
<td>HB2958</td>
<td>495</td>
</tr>
<tr>
<td>61</td>
<td>5</td>
<td>8</td>
<td>SB521</td>
<td>498</td>
</tr>
<tr>
<td>61</td>
<td>5</td>
<td>12 b*</td>
<td>HB2701</td>
<td>503</td>
</tr>
<tr>
<td>61</td>
<td>5</td>
<td>29</td>
<td>SB612</td>
<td>504</td>
</tr>
<tr>
<td>61</td>
<td>6</td>
<td>24</td>
<td>HB2952</td>
<td>505</td>
</tr>
<tr>
<td>61</td>
<td>7</td>
<td>4</td>
<td>HB3314</td>
<td>509</td>
</tr>
<tr>
<td>61</td>
<td>7</td>
<td>6 a</td>
<td>HB3314</td>
<td>516</td>
</tr>
<tr>
<td>61</td>
<td>10</td>
<td>15</td>
<td>SB339</td>
<td>519</td>
</tr>
<tr>
<td>61</td>
<td>11</td>
<td>6</td>
<td>HB2920</td>
<td>523</td>
</tr>
<tr>
<td>61</td>
<td>11</td>
<td>22</td>
<td>HB2684</td>
<td>592</td>
</tr>
<tr>
<td>61</td>
<td>11</td>
<td>26</td>
<td>HB3036</td>
<td>525</td>
</tr>
<tr>
<td>62</td>
<td>11 C</td>
<td>4</td>
<td>SB370</td>
<td>541</td>
</tr>
<tr>
<td>62</td>
<td>11 C</td>
<td>7</td>
<td>SB370</td>
<td>543</td>
</tr>
<tr>
<td>62</td>
<td>12</td>
<td>5</td>
<td>HB2737</td>
<td>477</td>
</tr>
<tr>
<td>62</td>
<td>12</td>
<td>6</td>
<td>HB3305</td>
<td>1323</td>
</tr>
<tr>
<td>62</td>
<td>12</td>
<td>26</td>
<td>SB347</td>
<td>544</td>
</tr>
<tr>
<td>62</td>
<td>12</td>
<td>28*</td>
<td>SB760</td>
<td>479</td>
</tr>
<tr>
<td>62</td>
<td>15*</td>
<td>1</td>
<td>HB2684</td>
<td>595</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>HB2684</td>
<td>595</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>HB2684</td>
<td>600</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>HB2684</td>
<td>601</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>HB2684</td>
<td>603</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6</td>
<td>HB2684</td>
<td>603</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>HB2684</td>
<td>604</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8</td>
<td>HB2684</td>
<td>605</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>HB2684</td>
<td>606</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>HB2684</td>
<td>607</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11</td>
<td>HB2684</td>
<td>608</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12</td>
<td>HB2684</td>
<td>608</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13</td>
<td>HB2684</td>
<td>609</td>
</tr>
<tr>
<td>64</td>
<td>2</td>
<td>1</td>
<td>SB172</td>
<td>1202</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>64</td>
<td>2</td>
<td>2</td>
<td>SB172</td>
<td>1204</td>
</tr>
<tr>
<td>64</td>
<td>2</td>
<td>3</td>
<td>SB172</td>
<td>1204</td>
</tr>
<tr>
<td>64</td>
<td>2</td>
<td>4</td>
<td>SB172</td>
<td>1206</td>
</tr>
<tr>
<td>64</td>
<td>3</td>
<td>1</td>
<td>SB153</td>
<td>1209</td>
</tr>
<tr>
<td>64</td>
<td>4</td>
<td>1</td>
<td>HB2225</td>
<td>1215</td>
</tr>
<tr>
<td>64</td>
<td>5</td>
<td>1</td>
<td>SB195</td>
<td>1217</td>
</tr>
<tr>
<td>64</td>
<td>5</td>
<td>2</td>
<td>SB195</td>
<td>1219</td>
</tr>
<tr>
<td>64</td>
<td>5</td>
<td>3</td>
<td>SB195</td>
<td>1219</td>
</tr>
<tr>
<td>64</td>
<td>6</td>
<td>1</td>
<td>HB2222</td>
<td>1221</td>
</tr>
<tr>
<td>64</td>
<td>6</td>
<td>2</td>
<td>HB2222</td>
<td>1222</td>
</tr>
<tr>
<td>64</td>
<td>6</td>
<td>3</td>
<td>HB2222</td>
<td>1223</td>
</tr>
<tr>
<td>64</td>
<td>7</td>
<td>1</td>
<td>SB227</td>
<td>1226</td>
</tr>
<tr>
<td>64</td>
<td>7</td>
<td>2</td>
<td>SB227</td>
<td>1230</td>
</tr>
<tr>
<td>64</td>
<td>7</td>
<td>3</td>
<td>SB227</td>
<td>1233</td>
</tr>
<tr>
<td>64</td>
<td>7</td>
<td>4</td>
<td>SB227</td>
<td>1237</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>1</td>
<td>HB2819</td>
<td>1241</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>2</td>
<td>HB2819</td>
<td>1245</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>3</td>
<td>HB2819</td>
<td>1246</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>4</td>
<td>HB2819</td>
<td>1247</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>5</td>
<td>HB2819</td>
<td>1248</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>6</td>
<td>HB2819</td>
<td>1252</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>7</td>
<td>HB2819</td>
<td>1252</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>8</td>
<td>HB2819</td>
<td>1253</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>9</td>
<td>HB2819</td>
<td>1254</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>10</td>
<td>HB2819</td>
<td>1255</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>11</td>
<td>HB2819</td>
<td>1256</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>12</td>
<td>HB2819</td>
<td>1257</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>13</td>
<td>HB2819</td>
<td>1257</td>
</tr>
<tr>
<td>64</td>
<td>9</td>
<td>14</td>
<td>HB2819</td>
<td>1258</td>
</tr>
<tr>
<td>64</td>
<td>10</td>
<td>1</td>
<td>HB2170</td>
<td>1261</td>
</tr>
<tr>
<td>64</td>
<td>10</td>
<td>2</td>
<td>HB2170</td>
<td>1261</td>
</tr>
<tr>
<td>64</td>
<td>10</td>
<td>3</td>
<td>HB2170</td>
<td>1264</td>
</tr>
<tr>
<td>64</td>
<td>10</td>
<td>4</td>
<td>HB2170</td>
<td>1265</td>
</tr>
</tbody>
</table>

## CODE REPEALED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>16</td>
<td>6</td>
<td>SB588</td>
<td>336</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>7 b</td>
<td>SB414</td>
<td>900</td>
</tr>
<tr>
<td>5 A</td>
<td>1</td>
<td>10</td>
<td>SB572</td>
<td>414</td>
</tr>
<tr>
<td>5 A</td>
<td>3 C</td>
<td>1</td>
<td>SB414</td>
<td>900</td>
</tr>
<tr>
<td>5 A</td>
<td>2</td>
<td></td>
<td>SB414</td>
<td>900</td>
</tr>
<tr>
<td>5 A</td>
<td>3</td>
<td></td>
<td>SB414</td>
<td>900</td>
</tr>
<tr>
<td>5 A</td>
<td>4</td>
<td></td>
<td>SB414</td>
<td>900</td>
</tr>
<tr>
<td>5 A</td>
<td>5</td>
<td></td>
<td>SB414</td>
<td>900</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### CODE REPEALED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>SB414</td>
<td>6</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>SB414</td>
<td>7</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>SB414</td>
<td>8</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>SB414</td>
<td>9</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>SB414</td>
<td>10</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>SB414</td>
<td>11</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>SB414</td>
<td>12</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>SB414</td>
<td>13</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>SB414</td>
<td>14</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>SB414</td>
<td>15</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>SB414</td>
<td>16</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>SB414</td>
<td>17</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>4</td>
<td>6a</td>
<td>HB3120</td>
<td>1462</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>18</td>
<td>SB243</td>
<td>346</td>
</tr>
<tr>
<td>16</td>
<td>14</td>
<td>1</td>
<td>HB2531</td>
<td>1381</td>
</tr>
<tr>
<td>16</td>
<td>14</td>
<td>2</td>
<td>HB2531</td>
<td>1381</td>
</tr>
<tr>
<td>16</td>
<td>14</td>
<td>3</td>
<td>HB2531</td>
<td>1381</td>
</tr>
<tr>
<td>18</td>
<td>10 A</td>
<td>11</td>
<td>HB3011</td>
<td>414</td>
</tr>
<tr>
<td>18</td>
<td>C</td>
<td>7</td>
<td>8</td>
<td>SB373</td>
</tr>
<tr>
<td>19</td>
<td>2 G</td>
<td>1</td>
<td>HB2652</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>HB2652</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>HB2652</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6</td>
<td>HB2652</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>HB2652</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>HB2652</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>HB2652</td>
<td>415</td>
</tr>
<tr>
<td>19</td>
<td>10</td>
<td>1</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13</td>
<td>HB2651</td>
<td>416</td>
</tr>
<tr>
<td>19</td>
<td>22</td>
<td>1</td>
<td>HB2742</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>HB2742</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>HB2742</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>HB2742</td>
<td>416</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>HB2742</td>
<td>416</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td></td>
<td></td>
<td>HB2742</td>
<td>416</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td>HB2742</td>
<td>416</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>17</td>
<td>SB537</td>
<td>1774</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>18</td>
<td>SB537</td>
<td>1774</td>
</tr>
<tr>
<td>28</td>
<td>5 B</td>
<td>1</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>14</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>16</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>17</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td></td>
<td>18</td>
<td>SB280</td>
<td>432</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>9 a</td>
<td>SB587</td>
<td>1580</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>10 a</td>
<td>HB2531</td>
<td>1381</td>
</tr>
<tr>
<td>30</td>
<td>31</td>
<td>7 a</td>
<td>HB2532</td>
<td>1439</td>
</tr>
<tr>
<td>33</td>
<td>15 D</td>
<td>1</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11</td>
<td>SB552</td>
<td>1092</td>
</tr>
<tr>
<td>33</td>
<td>48</td>
<td>11</td>
<td>SB408</td>
<td>1187</td>
</tr>
<tr>
<td>61</td>
<td>11</td>
<td>20</td>
<td>HB2920</td>
<td>523</td>
</tr>
</tbody>
</table>

**CODE REPEALED (STATUTORY):**

Animals

Male breeding

§19-10-1 through §19-10-13  

| Page | 37 |

* Indicates new chapter, article or section.
CODE REPEALED (STATUTORY) - (Continued):
Tree Fruit Industry Self-Improvement Act of 1984
§19-2G-1 through §19-2G-10 ..................... 36
Vinegars
Regulation of
§19-22-1 through §19-22-7 ....................... 38
Vocational Rehabilitation Program
Officers or employees
Political activities
Limiting
§18-10A-11 ..................................... 35

CONSUMER PROTECTION:
Regulated consumer lenders
Refinancing or consolidation of loans
Annual percentage rate
Disclosure of higher ........................ 39

CORRECTIONS:
Correctional Industries Act of 2009
Citation of article ............................... 43
Establishing ................................... 43
Inmate-made goods
Catalogues, website of products ................. 43
Pricing
Commissioner to determine .................... 43
Purchasing
Open market
Prohibiting .................................... 43
State agencies .................................. 43
Exceptions ..................................... 43
Legislative findings ............................. 43
Purpose ......................................... 43
Service contracts ............................... 43
State Treasury
Special revenue account
Creating ........................................ 43
Inmates
Benefit funds .................................... 40
Medical fees
Reimbursement .................................. 45
Personal communications
Disclosing ....................................... 41
Sentencing
Reduction
INDEX

CORRECTIONS - (Continued):
   Education and rehabilitation programs
      Completion of .................................. 44 445
      Trustee accounts and funds ....................... 40 419
   Youthful offenders
      Sentencing discretion .................................. 42 429

COUNTIES:
   Courthouse Facilities Improvement Authority
      Updating language .................................. 46 450

COUNTY COMMISSIONS:
   County clerks
      Fees collected by .................................. 49 465
   County commissioners
      Election of
         Nomination of candidates ............................ 47 455
         Qualifications .................................. 47 457
         Challenging .................................. 47 458
   County litter control officers
      Authority of
         Increasing .................................. 48 459

COURTESY PATROL PROGRAM:
   Fund installments
      Monthly
         Requiring .................................. 50 469

COURTS AND THEIR OFFICERS:
   Circuit Court
      Seventeenth judicial circuit
         Judge
            Adding .................................. 52 472
   Supreme Court of Appeals
      Multi-judicial-circuit probation officers
         Hiring of
            Authorizing .................................. 53 476
   Clerk's Office
      Appointment and compensation provisions
         Revising .................................. 51 471
      Pilot pre-trial release programs
         Authorizing .................................. 54 479

CRIMES AND THEIR PUNISHMENT:
   Child support
      Willful nonpayment
         Penalties .................................. 62 504
CRIMES AND THEIR PUNISHMENT - (Continued):

Community corrections programs
  Fees ........................................ 69
County hiring and employment prohibitions
  Spousal relationships
    Exempting certain ......................... 65
Criminally injurious conduct
  Definition
    Expanding .................................. 68
Expungement petitions
  Notice and publication requirements
    Removing ................................... 67
Government employee or contract worker
  Crimes against
    Increased penalties ....................... 55
Handguns
  Concealed
    Licensing ................................... 64
Incapacitated adults
  Protecting ................................... 56
Jail or correctional facility
  Jail contraband
    Telecommunication devices
      Including ................................ 60
Juvenile Services, Division of
  Custody of
    Escape from ................................ 61
Petit larceny
  Second or subsequent
    Felony offense
      Eliminating ............................. 66
Property
  Commercial, railroad or public utility
    Crimes committed on or against
      Criminal penalties
        Extending ................................ 57
Railroad property
  Railcars and locomotives
    Including ................................ 58
Sex offenders
  Extended supervision
    Terminology related to
      Revising ................................ 70
Terroristic threats
  Felony ....................................... 63
INDEX

CRIMES AND THEIR PUNISHMENT - (Continued):
Trespassing
Fines
Increasing ................................... 59

DESIGN-BUILD PROGRAM:
Highway design-build pilot program
Bids
Invitation for ................................ 71
Continuing .................................... 71
Report to the Legislature ................. 71

DOMESTIC RELATIONS:
Grandparent visitation
Family court jurisdiction
Establishing .................................. 73
Military service deployment
Custodial rights and child support
Modifying .................................. 72

DOMESTIC VIOLENCE:
Domestic violence protection orders
Law-enforcement officers
Arrest without warrant ....................... 74
Service of pleadings and orders by ........ 74
Nonjudicial enforcement .................... 74
Notice of order or extension ............... 74
Supreme Court of Appeals
Registering with ................................ 75
Time period in effect ........................ 74
Violations .................................... 74
Misdemeanor offenses ........................ 74
Penalties .................................... 74

DOUBLE DIPPING:
Public employees
Reemployment after retirement
Elected officers
Restrictions .................................... 76

DRIVER'S LICENSES:
Driver education courses
Completion of
Point reductions ............................... 77
Graduated driver's licenses
DRIVER'S LICENSES - (Continued):
Restrictions
   Imposing ................................... 78

DRUG OFFENDER ACCOUNTABILITY:
Drug Offender Accountability and Treatment Act
   Court authorization and structure .................. 79
   Definitions .................................... 79
   Drug court teams ................................ 79
   Drug testing ................................... 79
   Eligibility ..................................... 79
   Funding ...................................... 79
   Governance ................................... 79
Liability
   Immunity ................................... 79
   Offender accountability .......................... 79
   Policy and goals ................................ 79
   Program integrity ............................... 79
   Short title ..................................... 79
   Statutory construction ............................ 79
   Treatment and support services .................... 79

EDUCATION:
Board of education
   Depositories and banks
      Requirements ................................ 81
County board members
   Training hours
      Reporting ................................... 80
Early childhood education programs ................. 26
   Criteria ....................................... 26
Quality rating and improvement system
   Advisory council ............................... 26
   Findings and intent ............................ 26
   Pilot projects ................................ 26
Statewide quality improvement system
   Implementation of
      Financial plan ............................ 26
Statewide quality rating system
   Creating ...................................... 26
   Legislative rule required ...................... 26
   Minimum provisions ........................... 26
Higher education
   PROMISE Scholarship
      Fund
         Continuing ................................ 84
EDUCATION - (Continued):

PROMISE Scholarship Board
Dissolving .................................. 84
Requirements ................................ 84
Transfer of funds ............................. 84

Yellow Ribbon G.I. Education Enhancement Program
Requiring participation ..................... 86

Higher Education Policy Commission
Data sharing state compact
Authorizing .................................. 85
Legislative rules
Authorizing .................................. 87

Net enrollment
Method for computing
Modifying .................................. 82

Professional student support personnel
Defining ...................................... 82

School service personnel
Seniority rights ................................ 83

Science and Research Council
Establishing ................................... 88
Purpose ....................................... 88
Reports ....................................... 88
Strategic plan ................................ 88

ELECTIONS:

County commissions
Early voting locations
Authorizing .................................. 90

Financial statements
Post-primary and post general
Filing
Extending time frame ....................... 94
Failure to file ................................ 94

Municipalities
Vote by mail pilot program .................. 91
Secretary of State
Rulemaking ................................... 91
Short title .................................... 91
Termination .................................. 91
Voting by mail
Authority to conduct ....................... 91

Party executive committees
Nominees of election officials ............... 89
Recount procedures .......................... 93

INDEX

2065

664
668
664
693
687
699
627
634
703
703
706
706
712
733
736
716
717
716
719
719
728
ELECTIONS - (Continued):
Third party candidates
  Nominating procedures ......................... 92
  Primary elections ............................ 92

ELEVATOR SAFETY:
Elevator apprentices
  Supervision requirements
    Clarifying ................................... 95

ENVIRONMENTAL PROTECTION:
Carbon dioxide
  Sequestration and storage
    Cooperative agreements ....................... 97
    Definitions .................................. 97
    Legislative findings ......................... 97
    Permit
      Application requirements .................... 97
      Requiring ................................... 97
    Reporting and accountability ................. 97
    Secretary of Environmental Protection
      Powers and duties ........................... 97
    Working group ............................... 97
Coalbed methane wells
  Permit applications
    Notice requirements
      Clarifying .................................. 100
Selenium effluent limits
  Compliance
    Extending time for ............................ 98
Solid waste facility closure assistance
  Midwest Landfill ..............................
Surface mining
  Reporting requirements
    Terminology
      Updating ..................................... 96

FAIRS AND FESTIVALS:
Division of Culture and History
  Commissioner
    Distribution of funds
      Authorizing .................................. 101

FILM INDUSTRY INVESTMENT ACT:
Definitions ....................................... 102
**INDEX**

**FILM INDUSTRY INVESTMENT ACT - (Continued):**
Tax credits
- Amount allowed ................................ 102
- Effective date .................................. 102
- Expiration and forfeiture ......................... 102
- Legislative rules ................................ 102
- Limitation ..................................... 102
- Requirements .................................. 102
- Unused ....................................... 102

**FIRE DEPARTMENTS:**
Highway emergencies
- Department of Transportation
  - Transferring powers of control to .......... 103

**FORECLOSURE DATA:**
Foreclosure data and statistics
- Gathering and reporting ......................... 104

**FREEDOM OF INFORMATION:**
Corrections, Division of
- Records
  - Exempting .................................. 105
Regional Jail Authority
- Records
  - Exempting .................................. 105

**GAMING ACTIVITIES:**
Historic resort hotel
- Gaming operations .............................. 106

**GUARDIANSHIP AND CONSERVATORSHIP ACT:**
Administration .................................... 107
- Appointment
  - Procedure .................................. 107
- Termination, revocation and modifications .... 107
Definitions and general provisions ............... 107

**HEALTH:**
Certificate of need process
- Modifying .................................... 111
Comprehensive Behavioral Health Commission
  and Advisory Council
    - Reestablishing ............................. 117
Emergency Medical Services Act
<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency medical services</td>
<td></td>
<td>113</td>
</tr>
<tr>
<td>Agency licensure fund</td>
<td></td>
<td>988</td>
</tr>
<tr>
<td>Personnel</td>
<td></td>
<td>989</td>
</tr>
<tr>
<td>Standards</td>
<td></td>
<td>986</td>
</tr>
<tr>
<td>Powers and duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governor’s Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health enhancement and lifestyle planning</td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>-health care providers</td>
<td></td>
<td>900</td>
</tr>
<tr>
<td>Uniform credentialing</td>
<td></td>
<td>939</td>
</tr>
<tr>
<td>Local health departments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State aid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funding mechanism</td>
<td></td>
<td>109</td>
</tr>
<tr>
<td>Management of Pain Act</td>
<td></td>
<td>1335</td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
<td>1336</td>
</tr>
<tr>
<td>Disciplinary sanctions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limiting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicine, Board of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Practice of medicine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unauthorized practice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal penalties</td>
<td></td>
<td>1329</td>
</tr>
<tr>
<td>Preventive Care Pilot Program</td>
<td></td>
<td>981</td>
</tr>
<tr>
<td>Extending</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Health, Bureau of</td>
<td></td>
<td>996</td>
</tr>
<tr>
<td>Early intervention services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Providing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tobacco products</td>
<td></td>
<td>1000</td>
</tr>
<tr>
<td>Original factory-wrapped packaging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requiring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uniform Maternal Screening Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advisory council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establishing</td>
<td></td>
<td>993</td>
</tr>
<tr>
<td>Responsibilities</td>
<td></td>
<td>994</td>
</tr>
<tr>
<td>Legislative findings</td>
<td></td>
<td>993</td>
</tr>
<tr>
<td>Legislative rule-making authority</td>
<td></td>
<td>995</td>
</tr>
<tr>
<td>Screening tool</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicability</td>
<td></td>
<td>995</td>
</tr>
<tr>
<td>Confidentiality</td>
<td></td>
<td>995</td>
</tr>
<tr>
<td>HISTORIC PRESERVATION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County’s General Revenue Fund</td>
<td></td>
<td>118</td>
</tr>
<tr>
<td>Removing prohibition</td>
<td></td>
<td>1007</td>
</tr>
</tbody>
</table>
# INDEX

## HOUSING:
- Economic Development Authority
  - Minority neighborhoods
    - Neighborhood Housing and Economic Stabilization Program
      - Creating .................................. 119

## HUMAN SERVICES:
- Child support obligations
  - Assignment .................................. 121
- Medicaid program
  - Assignment
    - Life insurance policy
      - Death benefit
        - Exempting .................................. 122
  - Competitive bid process
    - Certain contracts
      - Exempting .................................. 120
    - Procedures
      - Establishing .................................. 120
- Medical Services, Bureau for
  - Information
    - Required sharing .................................. 123

## HUNTING AND FISHING:
- Bear
  - Cub
    - Shooting at or killing
      - Prohibiting .................................. 124
  - Lawful weight limits
    - Clarifying .................................. 124
- Hunters
  - Duties and conduct .................................. 126
- Licenses
  - Life-threatening condition
    - Special hunting and fishing
      - Creating .................................. 125

## INDEPENDENT LIVING COUNCIL:
- Council members
  - Appointment of
    - Clarifying .................................. 127

## INSURANCE:
- Automobile liability insurance
  - Cancellation of .................................. 131
INSURANCE - (Continued):

Group accident and sickness insurance
   Enrollment period ................................ 135
   Mental illness
   Treatment of
       Requiring ................................ 129

Health care insurance
   Affordable Health Care Plan
       Applicability ................................ 135
       Assessment .................................. 135
       Definitions .................................. 135
       Eligibility ................................... 135
       Legislative intent ............................. 135
       Legislative rules ............................. 135

   Plans
       Alternative .................................. 135
       Approvals .................................. 135
       Disapprovals ................................ 135
       Grounds for .................................. 135
       Proposals .................................. 135
       Regulation and marketing ................... 135

   In-state medical providers
   Small group health benefit plans
       Notice of ................................... 137

   Limited health care service
   Definitions
       Expanding ................................... 138

   Uninsurable individuals
       Model health plan ............................ 141

Insurance Commissioner
   Certain cases
       Restitution
           Authorizing ................................ 130

   Life insurance policies
       Groups and certain others
           Permitting ................................ 134

   Insurance coverage
       Dental anesthesia
           Mandating ................................ 128

Insurers
INDEX 2071

INSURANCE - (Continued):
  Financial audits ................................ 140 1156
  Life and health insurance guaranty associations ........ 139 1117
  Long-term care products
    Insurance producers
      Training .................................... 132 1082
  Viatical settlements
    Licensing
      Satisfying financial requirements
        Alternative means ......................... 133 1085

LABOR:
  Crane Operator Certification Act
    Certification
      Exemptions .................................. 142 1192
      Required .................................... 142 1192
    Requirements
      Minimum .................................... 142 1196
  Commissioner of the Division of Labor
    Powers and duties ............................. 142 1194
    Definitions .................................. 142 1191
    Penalties .................................... 142 1198

LEGISLATIVE RULES:
  Promulgation of
    Accountancy, Board of ........................ 150 1241
    Administration, Department of ................ 143 1204
    Agriculture, Commissioner of .................. 150 1245
    Architects, Board of ........................... 150 1246
    Consolidated Public Retirement Board .......... 143 1202
    Crime, Delinquency and Correction,
      Governor’s Committee on ..................... 150 1248
    Deaf and Hard of Hearing, Commission for the .. 146 1219
    Dental Examiners, Board of .................... 150 1247
    Development Office ............................ 151 1261
    Education and the Arts, Department of .......... 145 1214
    Environmental Protection, Department of ......... 144 1209
    Ethics Commission ............................. 143 1206
    Executive, Administrative ...................... 143 1200
    Fire Commission ............................... 147 1222
    Fire Marshal .................................. 147 1223
    Health and Human Resources, Department of ....... 146 1217
    Human Services, Division of .................... 146 1219
    Insurance Commissioner ....................... 148 1230
    Labor, Division of ............................ 151 1261
LEGISLATIVE RULES - (Continued):

Medicine, Board of ................................ 150 1252
Natural Resources, Division of ...................... 151 1264
Personnel, Division of ................................ 143 1204
Pharmacy, Board of ................................ 150 1252
Physical Therapy, Board of .......................... 150 1253
Racing Commission .................................. 148 1233
Regional Jail and Correctional Facility Authority .. 147 1221
Registered Professional Nurses,
  Board of Examiners for ............................ 150 1254
Rehabilitation Services, Division of .................. 145 1215
Respiratory Care, Board of ............................ 150 1255
Secretary of State .................................... 150 1256
Social Work Examiners, Board of ..................... 150 1257
Tax Department ....................................... 148 1226
Tourism, Division of ................................ 151 1265
Treasurer’s Office .................................... 150 1257
Veterinary Medicine, Board of ....................... 150 1258

LIENS:
Redemption property purchaser
  Certified funds
    Requiring ....................................... 152 1266

LOCAL LAWS:
Mercer County
  Emergency operations center board
    Authorizing .................................... 224 1818
Richwood, City of
  Levying body
    Extending time to meet ......................... 223 1816

MEDICAID:
Long-term Care Partnership Program
  Authority ......................................... 153 1269
Definitions ........................................ 153 1268
Purpose ........................................... 153 1268

MENTAL HYGIENE:
Mental Hygiene Commissioners
  Readmission orders
    Permission to sign ............................ 154 1271

MERCER COUNTY:
Emergency operations center board
  Authorizing .................................... 224 1818