

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2011
Constitutional Amendment, 2011
First Extraordinary Session, 2011
Second Extraordinary Session, 2011

Volume I
Chapters 1 - 117

WEST VIRGINIA HOUSE OF DELEGATES
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SPEAKER OF THE HOUSE

COMPILED AND PUBLISHED
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OF

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FOREWORD

These volumes contain the Acts of the First Regular Session and the First and Second Extraordinary Sessions of the 80th Legislature, 2011.

First Regular Session, 2011

The First Regular Session of the 80th Legislature convened on January 12, 2011. The Constitutional sixty-day limit on the duration of the session was midnight, March 12, 2011. The Governor issued a proclamation on March 9, 2011, extending the session for a period not to exceed three days for the purpose of considering the Budget and supplementary appropriation bills. A subsequent proclamation was issued on March 15, 2011, and the Legislature adjourned *sine die* on March 18, 2011.

Bills totaling 1,894 were introduced in the two houses during the session (1,273 House and 621 Senate). The Legislature passed 191 bills, 103 House and 88 Senate.

The Governor vetoed seventeen bills (**Com. Sub. for H. B. 2345**, Changing the membership of the PEIA Financial Board; **Com. Sub. for H. B. 2438**, Bringing older contradicting language still remaining in the code into conformity with §3-2-5(b)(3) and reestablishing a definition for “independent voter”; **Com. Sub. for H. B. 2464**, Adding additional requirements to the Ethics Act; **Com. Sub. for H. B. 2525**, Relating to the practice of social work; **Com. Sub. for H. B. 2542**, Clarifying requirements and procedures for access to cemeteries and grave sites located on private land; **Com. Sub. for H. B. 2639**, Authorizing miscellaneous boards and agencies to promulgate legislative rules; **Com. Sub. for H. B. 2663**, Relating to public service commissioners presiding at hearings; **Com. Sub. for H. B. 2955**, Authorizing the Division of Mining and Reclamation to assess certain fees to coal mine operators; **Com. Sub. for H. B. 3196**, Establishing a program and procedure for certifying medications assistive persons in the health industry; **Com. Sub. for S. B. 121**, Authorizing the DEP to promulgate legislative

rules; **Com. Sub. for S. B. 219**, Relating to maintaining solvency of Unemployment Compensation Fund; **Com. Sub. for S. B. 238**, Redesignating the Division of Veterans' Affairs as the Department of Veterans' Assistance; **Com. Sub. for S. B. 263**, Relating to special plates for testing of vehicles operated by certain nonprofit corporations; **Com. Sub. for S. B. 295**, Authorizing the DHHR to promulgate legislative rules; **S. B. 428**, Increasing and reallocating certain circuit court fees; **Com. Sub. for S. B. 458**, Updating the Logging Sediment Control Act; and **S. B. 608**, Increasing fees for services and documents issued by the DMV). Of the vetoed bills, the Legislature amended and again passed Com. Sub. for H. B. 2464, Com. Sub. for H. B. 2525, Com. Sub. for H. B. 2542, Com. Sub. for H. B. 2639, Com. Sub. for H. B. 2663, Com. Sub. for H. B. 2955, Com. Sub. for H. B. 3196, Com. Sub. for S. B. 121, Com. Sub. for S. B. 219, Com. Sub. for S. B. 238, Com. Sub. for S. B. 263, Com. Sub. for S. B. 295, S. B. 428 and Com. Sub. for S. B. 458, leaving a net total of 188 bills, 101 House and 87 Senate, which became law.

There were 259 Concurrent Resolutions introduced during the session, 165 House and 94 Senate, of which 58 House and 37 Senate were adopted. Forty-one House Joint Resolutions and 14 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 1 Senate Joint Resolution (**S. J. R. 10**, Proposing an amendment to the Constitution designated Repeal The Two Consecutive Term Limitation for Sheriffs Amendment) was adopted. The House introduced 44 House Resolutions, and the Senate introduced 57 Senate Resolutions, of which 34 House and 55 Senate were adopted.

The Senate failed to pass 49 House bills passed by the House, and 66 Senate bills failed passage by the House. Three bills died in conference, 1 House and 2 Senate: **Com. Sub. for H. B. 2757**, Providing for evaluation of professional personnel in the public schools; **Com. Sub. for S. B. 242**, Dedicating portion of coal severance tax to county of origin; and **S. B. 331**, Correcting invalid code reference in definition of "eligible taxpayer".

* * * * *

First Extraordinary Session, 2011

The Proclamation calling the Legislature into Extraordinary Session at 12:00 NOON, August 1, 2011, contained nine items for consideration. A subsequent proclamation was issued on August 3, 2011, increasing the items for consideration to ten.

Nine bills were introduced and passed by the Legislature during the Extraordinary Session, 1 House Bill and 8 Senate Bills.

The Governor vetoed one bill (**H. B. 106**, Reapportioning the House of Delegates districts), leaving a net total of 8 Senate Bills which became law. The Senate adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned *sine die* on August 5, 2011.

* * * * *

Second Extraordinary Session, 2011

The Proclamation calling the Legislature into Extraordinary Session at 12:00 NOON, August 18, 2011, contained two items for consideration.

The Legislature passed 3 bills, 2 supplemental appropriation bills (S. B. 2001 and S. B. 2002) and the reapportionment of the House of Delegates (H. B. 201). The Senate also adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned *sine die* on August 21, 2011.

* * * * *

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

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

GREGORY M. GRAY
*Clerk of the House and
Keeper of the Rolls.*

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186. (*HB2696) Authorizing the County Commission of Boone County to Transfer its Title and Interests in the Boone Memorial Hospital. 1891

LOCAL - HUNTINGTON

187. (*HB3004) Relating to the Greater Huntington Park and Recreation District. 1894

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188. (HB2557) Extending the Time for the Board of Education of Upshur County to Meet as a Levying Body. 1915

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2.	(SB1005)	Supplementing, Amending and Increasing Appropriations to the Department of Transportation.	1926
3.	(SB1007)	Making a Supplementary Appropriation of Unappropriated Moneys to the Secretary of State.	1928
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3. (HB201) Reapportioning the House of Delegates Districts. 2050

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR AND EXTRAORDINARY SESSIONS, 2011

OFFICERS

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

District	Name	Address	Legislative Service
First	Ronnie D. Jones (D)	Weirton	80 th
	Randy Swartzmiller (D)	New Cumberland	75 th - 80 th
Second	Timothy R. Ennis (D)	Wellsburg	72 nd - 80 th
	Roy Givens (D)	Wellsburg	76 th - 80 th
Third	Ryan Ferns (D)	Wheeling	80 th
	Erikka Storch (R)	Wheeling	80 th
Fourth	Michael T. Ferro (D)	McMechen	79 th - 80 th
	Scott G. Varner (D)	Moundsville	71 st - 80 th
Fifth	Dave Pethel (D)	Hundred	69 th - 71 st ; 74 th - 80 th
Sixth	William Roger Romine (R)	Sistersville	75 th - 80 th
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78 th - 80 th
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71 st - 80 th
Ninth	*Anna Border (R)	Davisville	Appt. 6/21/11, 80 th
	Tom Azinger (R)	Vienna	72 nd - 80 th
Tenth	John Ellem (R)	Parkersburg	75 th - 80 th
	Daniel Poling (D)	Parkersburg	78 th - 80 th
Eleventh	Bob Ashley (R)	Spencer	67 th - 73 rd ; 75 th - 80 th
Twelfth	Mitch Carmichael (R)	Ripley	75 th - 80 th
	**Helen Martin (D)	Poca	Appt. 5/17/11, 80 th
Thirteenth	Brady Paxton (D)	Liberty	71 st ; Appt. 4/22/1999, 74 th ; 75 th - 80 th
	Troy Andes (R)	Hurricane	78 th - 80 th
Fourteenth	Brian Savilla (R)	Hurricane	80 th
	Kevin J. Craig (D)	Huntington	75 th - 80 th
Fifteenth	Jim Morgan (D)	Huntington	69 th -70 th ; Appt. 2/23/2001, 75 th ; 76 th - 80 th
	Carol Miller (R)	Huntington	78 th - 80 th
Sixteenth	Kelli Sobonya (R)	Huntington	76 th - 80 th
	Dale Stephens (D)	Huntington	75 th ; 77 th - 80 th
Seventeenth	Doug Reynolds (D)	Huntington	78 th - 80 th
	Richard Thompson (D)	Lavelette	65 th ; Resigned 6/1981; 76 th - 80 th
Eighteenth	Don C. Perdue (D)	Prichard	74 th - 80 th
	Larry W. Barker (D)	Madison	77 th - 80 th
Nineteenth	Greg Butcher (D)	Chapmanville	73 rd - 77 th ; 79 th - 80 th
	Rupert Phillips, Jr., (D)	Lundale	80 th
Twentieth	Ralph Rodighiero (D)	Logan	78 th - 80 th
	Josh Stowers (D)	Alum Creek	79 th - 80 th
Twenty-first	K. Steven Kominar (D)	Kermit	72 nd - 80 th
Twenty-second	Harry Keith White (D)	Gilbert	Appt. 9/11/1992, 70 th ; 71 st - 80 th
	Daniel J. Hall (D)	Oceana	79 th - 80 th
Twenty-third	Linda Goode Phillips (D)	Pineville	79 th - 80 th
	Clif Moore (D)	Thorpe	77 th - 80 th
Twenty-fourth	Marty Gearheart (R)	Bluefield	80 th
Twenty-fifth	John R. Frazier (D)	Princeton	65 th ; 79 th - 80 th
	Joe Ellington (R)	Princeton	80 th
Twenty-sixth	Gerald Crosier (D)	Union	76 th - 80 th
Twenty-seventh	Virginia Mahan (D)	Green Sulphur Springs	73 rd - 80 th
	Ricky Moye (D)	Crab Orchard	78 th - 80 th
Twenty-eighth	John D. O'Neal, IV (R)	Beckley	80 th
	Rick Snuffer (R)	Beaver	80 th
Twenty-ninth	Linda Sumner (R)	Beckley	76 th - 80 th

* Appointed June 21, 2011, to fill the vacancy created by the death of her husband, the Honorable Larry W. Border.

** Appointed May 17, 2011, to fill the vacancy created by the death of her husband, the Honorable Dale Martin.

MEMBERS OF THE HOUSE OF DELEGATES, Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73 rd - 80 th
	Ray Canterbury (R)	Ronceverte	75 th - 80 th
Twenty-ninth	David G. Perry (D)	Oak Hill	75 th - 80 th
	John Pino (D)	Oak Hill	67 th ; 71 st - 78 th ; 80 th
Thirtieth	Margaret Anne Staggers (D)	Fayetteville	78 th - 80 th
	Bonnie Brown (D)	South Charleston	66 th - 68 th ; 70 th ; 75 th - 80 th
	Nancy Peoples Guthrie (D)	Charleston	78 th - 80 th
	Barbara Hatfield (D)	South Charleston	67 th - 69 th ; 74 th - 80 th
	Mark Hunt (D)	Charleston	72 nd - 74 th ; 77 th - 80 th
	Eric Nelson (R)	Charleston	80 th
Thirty-first	Doug Skaff, Jr. (D)	South Charleston	79 th - 80 th
	Danny Wells (D)	Charleston	77 th - 80 th
Thirty-second	Meshea L. Poore (D)	Charleston	Appt. 12/18/2009; 79 th ; 80 th
	Tim Armistead (R)	Elkview	Appt. 9/5/1998, 73 rd ; 74 th - 80 th
Thirty-third	Patrick Lane (R)	Cross Lanes	77 th - 80 th
	Ron Walters (R)	Charleston	71 st - 73 rd ; 75 th - 80 th
	David L. Walker (D)	Clendenin	79 th - 80 th
Thirty-fourth	Brent Boggs (D)	Gassaway	73 rd - 80 th
Thirty-fifth	Harold Sigler (R)	Summersville	80 th
Thirty-sixth	Joe Talbott (D)	Webster Springs	71 st - 72 nd ; 76 th - 80 th
Thirty-seventh	Denise L. Campbell (D)	Elkins	80 th
	William G. Hartman (D)	Elkins	76 th - 80 th
Thirty-eighth	Peggy Donaldson Smith (D)	Weston	79 th - 80 th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76 th - 80 th
Fortieth	Mary M. Poling (D)	Moatsville	75 th - 80 th
Forty-first	Samuel J. Cann, Sr. (D)	Bridgeport	72 nd - 80 th
	Ron Fragale (D)	Clarksburg	70 th - 73 rd ; 75 th - 80 th
	Richard J. Jaquinta (D)	Clarksburg	76 th - 80 th
	Tim Miley (D)	Bridgeport	77 th - 80 th
Forty-second	Mike Manypenny (D)	Grafton	79 th - 80 th
Forty-third	Michael Caputo (D)	Fairmont	73 rd - 80 th
	Linda Longstreth (D)	Fairmont	77 th - 80 th
Forty-fourth	Tim Manchin (D)	Fairmont	76 th - 80 th
	Anthony Barill (D)	Morgantown	80 th
	Barbara Evans Fleischauer (D)	Morgantown	72 nd - 75 th ; 78 th - 80 th
Forty-fifth	Charlene Marshall (D)	Morgantown	74 th - 80 th
	Amanda Pasdon (R)	Morgantown	80 th
	Larry A. Williams (D)	Tunnelton	Appt. 10/8/1993, 71 st ; 72 nd - 80 th
Forty-sixth	Stan Shaver (D)	Tunnelton	74 th - 80 th
Forty-seventh	Harold K. Michael (D)	Moorefield	69 th - 80 th
Forty-eighth	Allen V. Evans (R)	Dorcas	70 th - 80 th
Forty-ninth	Gary G. Howell (R)	Keyser	80 th
Fiftieth	Ruth Rowan (R)	Points	77 th - 80 th
Fifty-first	Daryl E. Cowles (R)	Berkeley Springs	78 th - 80 th
Fifty-second	Larry D. Kump (R)	Falling Waters	80 th
Fifty-third	Jonathan Miller (R)	Bunker Hill	78 th - 80 th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76 th - 80 th
Fifty-fifth	John Overington (R)	Martinsburg	67 th - 80 th
Fifty-sixth	Eric L. Householder (R)	Martinsburg	80 th
Fifty-seventh	John Doyle (D)	Shepherdstown	66 th ; 71 st - 80 th
Fifty-eighth	Tiffany Elizabeth Lawrence (D)	Charlestown	79 th - 80 th

(D) Democrats 65
(R) Republicans 35

TOTAL..... 100

MEMBERS OF THE SENATE

REGULAR AND EXTRAORDINARY SESSIONS, 2011

OFFICERS

President - Earl Ray Tomblin, Chapmanville
Acting President - Jeffrey V. Kessler, Glen Dale
Clerk - Darrell E. Holmes, Charleston
Sergeant at Arms - Howard Wellman, Bluefield
Doorkeeper - Billy L. Bevino, Charleston

District	Name	Address	Legislative Service
First.	Orphy Klempa (D)	Wheeling.	(House 78 th - 79 th); 80 th
	Jack Yost (D)	Wellsburg.	(House 76 th - 78 th); 79 th - 80 th
Second.	Larry J. Edgell (D)	New Martinsburg.	74 th - 80 th
	Jeffrey V. Kessler (D)	Glen Dale.	Appt. 11/1997, 73 rd ; 74 th - 80 th
Third.	Donna J. Boley (R)	St. Marys.	Appt. 5/14/1985, 67 th ; 68 th - 80 th
	David C. Nohe (R)	Vienna.	80 th
Fourth.	Karen L. Facemyer (R)	Ripley.	(House 71 st - 74 th); 75 th - 80 th
	Mike Hall (R)	Hurricane.	(House 72 nd - 74 th); 78 th - 80 th
Fifth.	Robert H. Plymale (D)	Ceredo.	71 st - 80 th
	Evan H. Jenkins (D)	Huntington.	76 th - 80 th
Sixth.	H. Truman Chafin (D)	Williamson.	66 th - 80 th
	John Pat Fanning (D)	Jaeger.	58 th - 64 th ; 67 th - 68 th ; 73 rd - 80 th
Seventh.	Earl Ray Tomblin (D)	Chapmanville.	(House 62 nd - 64 th); 65 th - 80 th
	Ron Stollings (D)	Madison.	78 th - 80 th
Eighth.	Corey Palumbo (D)	Charleston.	(House 76 th - 78 th); 79 th - 80 th
	Erik P. Wells (D)	Charleston.	78 th - 80 th
Ninth.	Richard Browning (D)	Oceana.	(House 69 th - 72 nd); 75 th - 78 th ; 79 th - 80 th
	Mike Green (D)	Daniels.	78 th - 80 th
Tenth.	Ronald F. Miller (D)	Lewisburg.	80 th
	Mark Wills (D)	Princeton.	(House 74 th - 75 th); 80 th
Eleventh.	William Laird IV (D)	Oak Hill.	(House 73 rd - 75 th); 79 th - 80 th
	Gregory A. Tucker (D)	Summersville.	80 th
Twelfth.	Douglas Facemire (D)	Sutton.	79 th - 80 th
	Joseph M. Minard (D)	Clarksburg.	(House Appt. 1/1983; 66 th ; 67 th - 69 th); 70 th - 71 st ; 75 th - 80 th
Thirteenth.	Robert D. Beach (D)	Morgantown.	(House Appt. 5/1998, 73 rd ; 74 th - 79 th); 80 th
	Roman W. Prezioso, Jr. (D)	Fairmont.	(House 69 th - 72 nd); 73 rd - 80 th
Fourteenth.	Bob Williams (D)	Grafton.	79 th - 80 th
	Dave Sypolt (R)	Kingwood.	78 th - 80 th
Fifteenth.	Clark Barnes (R)	Randolph.	77 th - 80 th
	Walt Helmick (D)	Marlinton.	(House 1 yr., 69 th); Appt. 9/1989 69 th ; 70 th - 80 th
Sixteenth.	Herb Snyder (D)	Shenandoah Junctioin.	73 rd - 76 th ; 79 th - 80 th
	John R. Unger II (D)	Martinsburg.	74 th - 80 th
Seventeenth.	Brooks F. McCabe, Jr. (D)	Charleston.	74 th - 80 th
	Dan Foster (D)	Charleston.	(House 76 th); 77 th - 80 th

(D) Democrats 28
 (R) Republicans 6

TOTAL 34

COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 2011

*STANDING

AGRICULTURE

Butcher (*Chair*), Walker (*Vice Chair*), Boggs, Guthrie, Hall, Manypenny, Martin, Morgan, L. Phillips, R. Phillips, M. Poling, Reynolds, Rodighiero, Swartzmiller, Wells, Williams, Evans (*Minority Chair*), Canterbury (*Minority Vice Chair*), Anderson, Border, Ireland, C. Miller, Overington, Romine and Storch.

BANKING AND INSURANCE

Moore (*Chair of Banking*), Reynolds (*Vice Chair of Banking*), Perry (*Chair of Insurance*), Hall (*Vice Chair of Insurance*), Cann, Ferns, Fragale, Frazier, Hartman, Hunt, Iaquina, Mahan, Manchin, Michael, Morgan, Shaver, Stowers, Azinger (*Minority Chair of Banking*), J. Miller, (*Minority Vice Chair of Banking*), Ashley (*Minority Chair of Insurance*), Walters (*Minority Vice Chair of Insurance*), Carmichael, Nelson, O'Neal and Savilla.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Guthrie (*Vice Chair*), Brown, Caputo, Doyle, Ferro, Fragale, Frazier, Hatfield, Hunt, Marshall, Moore, Morgan, Perdue, Poore, Varner, Wells, Overington (*Minority Chair*), Romine (*Minority Vice Chair*), Armstead, Ellem, Householder, Kump, Lane and Sobonya.

EDUCATION

M. Poling (*Chair*), Paxton (*Vice Chair*), Barill, D. Campbell, Craig, Crosier, Ennis, Fragale, Lawrence, Moye, Perry, Pethel, Rodighiero, Shaver, Smith, Walker, Duke (*Minority Chair*), Sumner

*CLERK'S NOTE: Subsequent to adjournment of the 2011 Regular Session, two vacancies occurred as a result of death. This list reflects the composition of committees prior to the vacancies.

HOUSE OF DELEGATES COMMITTEES

(Minority Vice Chair), Armstead, Ellington, Gearheart, Pasdon, Rowan, Savilla and Sigler.

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)*, L. Phillips *(Vice Chair of Economic Development and Small Business)*, Barill, Brown, Butcher, Caputo, Fleischauer, Mahan, Manypenny, Marshall, Martin, Moye, Paxton, Skaff, Walker, Sobonya *(Minority Chair of Energy, Industry and Labor)*, C. Miller *(Minority Vice Chair of Energy, Industry and Labor)*, Andes *(Minority Chair of Economic Development and Small Business)*, Carmichael *(Vice Chair of Economic Development and Small Business)*, Savilla, Sigler, Snuffer and Storch.

FINANCE

White *(Chair)*, T. Campbell *(Vice Chair)*, Doyle, Guthrie, Iaquina, Kominar, Mahan, Manchin, Marshall, Perdue, L. Phillips, D. Poling, M. Poling, Reynolds, Stowers, Varner, Williams, Anderson *(Minority Chair)*, Carmichael *(Minority Vice Chair)*, Ashley, Border, Canterbury, Cowles, Evans and Walters.

GOVERNMENT ORGANIZATION

Morgan *(Chair)*, Stephens *(Vice Chair)*, Boggs, Butcher, Cann, Ferns, Givens, Hall, Hartman, Hatfield, Jones, Martin, R. Phillips, Staggers, Swartzmiller, Talbott, Romine *(Minority Chair)*, Azinger *(Minority Vice Chair)*, Householder, Howell, Kump, Nelson, O'Neal, Snuffer and Storch.

HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Perdue (*Chair*), Hatfield (*Vice Chair*), Barill, T. Campbell, D. Campbell, Ferns, Fleischauer, Lawrence, Marshall, Moore, Moye, Perry, L. Phillips, Poore, Rodighiero, Staggers, Border (*Minority Chair*), J. Miller (*Minority Vice Chair*), Andes, Ellington, Householder, Lane, C. Miller, Pasdon and Rowan.

JUDICIARY

Miley (*Chair*), Hunt (*Vice Chair*), Barker, Brown, Caputo, Ferro, Fleischauer, Frazier, Longstreth, Manypenny, Michael, Moore, Pino, Poore, Skaff, Wells, Ellem (*Minority Chair*), Lane (*Minority Vice Chair*), Andes, Hamilton, Ireland, C. Miller, J. Miller, Overington and Sobonya.

NATURAL RESOURCES

Talbott (*Chair*), Crosier (*Vice Chair*), Fragile, Guthrie, Hall, Manypenny, Martin, L. Phillips, R. Phillips, Pino, Reynolds, Rodighiero, Shaver, Swartzmiller, Varner, Wells, Hamilton (*Minority Chair*), Ireland (*Minority Vice Chair*), Anderson, Canterbury, Duke, Ellem, Evans, Romine and Sigler.

PENSIONS AND RETIREMENT

Pethtel (*Chair*), Ennis (*Vice Chair*), Givens, Guthrie, D. Poling, Canterbury and Duke.

POLITICAL SUBDIVISIONS

Manchin (*Chair*), Lawrence (*Vice Chair*), Cann, Doyle, Frazier, Hartman, Jones, Longstreth, Morgan, R. Phillips, D. Poling, Poore, Smith, Stephens, Varner, Williams, Sumner (*Minority Chair*), Cowles (*Minority Vice Chair*), Duke, Ellington, Gearheart, Householder, Kump, O'Neal and Overington.

HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

Martin (*Chair*), Staggers (*Vice Chair*), Barker, Boggs, Butcher, T. Campbell, Crosier, Hall, Kominar, Michael, Skaff, Smith, Stephens, Stowers, Walker, Wells, Cowles (*Minority Chair*), Evans (*Minority Vice Chair*), Ellington, Gearheart, Howell, Nelson, Pasdon, Savilla and Snuffer.

SENIOR CITIZEN ISSUES

Williams (*Chair*), Moye (*Vice Chair*), Butcher, D. Campbell, Craig, Ferro, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Pethtel, Pino, D. Poling, Stephens, Rowan (*Minority Chair*), Duke (*Minority Vice Chair*), Gearheart, Hamilton, Howell, Kump, Sigler, Snuffer and Sumner.

RULES

Thompson (*Chair*), Boggs, Caputo, Fragale, Hatfield, Marshall, Miley, Morgan, Paxton, M. Poling, Talbott, Varner, 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*), Smith (*Vice Chair of Homeland Security*), Cann, Craig, Ennis, Ferro, Fleischauer, Givens, Hatfield, Jones, Paxton, Pethtel, Staggers, Stephens, Azinger (*Minority Chair of Veterans' Affairs*), Rowan (*Minority Vice Chair of Veterans' Affairs*), Walters (*Minority Chair of Homeland Security*), Ashley (*Minority Vice Chair of Homeland Security*), Armstead, Howell, Nelson, O' Neal and Pasdon.

HOUSE OF DELEGATES COMMITTEES

ENROLLED BILLS

Poore (*Chair*), D. Poling (*Vice Chair*), Fragale and Overington.

LEGISLATIVE RULE-MAKING REVIEW

Brown (*Chair*), D. Poling (*Vice Chair*), Fleischauer, Talbott, Overington and Sobonya.

FOREST MANAGEMENT REVIEW

Michael (*Chair*) and Hartman (*Vice Chair*).

PARKS AND RECREATION

Wells (*Co-Chair*) and Manypenny (*Co-Chair*).

COMMITTEES OF THE SENATE

Regular Session, 2011

STANDING

AGRICULTURE

Williams (*Chair*), Beach (*Vice Chair*), Fanning, Helmick, Laird, Miller, Minard, Snyder, K. Facemyer, Nohe and Sypolt.

BANKING AND INSURANCE

Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Green, Helmick, McCabe, Palumbo, Prezioso, Tucker, K. Facemyer, Hall and Nohe.

CONFIRMATIONS

Edgell (*Chair*), Chafin (*Vice Chair*), Browning, D. Facemire, Plymale, Prezioso, Snyder, Hall and Sypolt.

ECONOMIC DEVELOPMENT

Browning (*Chair*), Klempa (*Vice Chair*), Chafin, D. Facemire, Helmick, McCabe, Prezioso, Snyder, Stollings, Wells, Williams, K. Facemyer, Hall and Sypolt.

EDUCATION

Plymale (*Chair*), Wells (*Vice Chair*), Beach, Browning, Chafin, Edgell, Foster, Laird, Stollings, Tucker, Unger, Wills, Barnes and Boley.

ENERGY, INDUSTRY AND MINING

Green (*Chair*), D. Facemire (*Vice Chair*), Beach, Fanning, Helmick, Jenkins, Klempa, Minard, Stollings, Yost, K. Facemyer, Nohe and Sypolt.

SENATE COMMITTEES

ENROLLED BILLS

Miller (*Chair*), Palumbo, Beach, Wells and Barnes.

FINANCE

Prezioso (*Chair*), D. Facemire (*Vice Chair*), Chafin, Edgell, Green, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Unger, Wells, Yost, Hall, Boley and Sybolt.

GOVERNMENT ORGANIZATION

Snyder (*Chair*), Green (*Vice Chair*), Browning, Chafin, Foster, Klempa, McCabe, Miller, Minard, Palumbo, Williams, Yost, Boley and Sybolt.

HEALTH AND HUMAN RESOURCES

Stollings (*Chair*), Foster (*Vice Chair*), Chafin, Jenkins, Laird, Miller, Palumbo, Prezioso, Tucker, Wills, Yost, Boley and Hall.

INTERSTATE COOPERATION

Jenkins (*Chair*), Tucker (*Vice Chair*), Palumbo, Wells, Wills, Nohe and Sybolt.

JUDICIARY

Palumbo (*Chair*), Wills (*Vice Chair*), Beach, Browning, Fanning, Foster, Jenkins, Klempa, McCabe, Minard, Snyder, Tucker, Unger, Williams, Barnes, K. Facemyer and Nohe.

SENATE COMMITTEES

LABOR

Yost (*Chair*), Miller (*Vice Chair*), Edgell, Foster, Green, Klempa, Snyder, Williams, Wills, Barnes and Nohe.

MILITARY

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

NATURAL RESOURCES

Laird (*Chair*), Fanning (*Vice Chair*), Beach, Edgell, D. Facemire, Green, Helmick, Prezioso, Williams, Wills, Barnes, Boley and K. Facemyer.

PENSIONS AND RETIREMENT

Foster (*Chair*), Edgell (*Vice Chair*), Jenkins, McCabe, Plymale, Hall and Nohe.

RULES

Kessler (*Chair*), McCabe, Browning, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Boley and Hall.

TRANSPORTATION AND INFRASTRUCTURE

Beach (*Chair*), Klempa (*Vice Chair*), D. Facemire, Fanning, Plymale, Williams, Tucker, Barnes and K. Facemyer.

SENATE COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

Miller (*Cochair*), Palumbo, Beach, Wells and Barnes.

GOVERNMENT AND FINANCE

Kessler (*Cochair*), Palumbo, Plymale, Prezioso, Unger, K. Facemyer and Hall.

GOVERNMENT OPERATIONS

Snyder (*Cochair*), D. Facemire (*Cochair*), Klempa, McCabe and Barnes.

LEGISLATIVE RULE-MAKING REVIEW

Minard (*Cochair*), Snyder (*Vice Cochair*), Laird, Unger, Boley, K. Facemyer and Kessler (*ex officio*).

PENSIONS AND RETIREMENT

Foster (*Cochair*), Edgell (*Vice Cochair*), Jenkins, McCabe, Plymale, Hall and Nohe.

RULES

Kessler (*Cochair*), Unger and Hall.

SENATE COMMITTEES

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

Browning (*Cochair*), Helmick, Klempa, McCabe, Palumbo, Plymale, Prezioso, Stollings, Unger, Barnes, Facemyer and Sypolt.

COMMISSION ON INTERSTATE COOPERATION

Jenkins (*Cochair*), Snyder (*Vice Cochair*), Browning, Palumbo, Wells, Johe, Sypolt and Kessler (*ex officio*).

COMMISSION ON SPECIAL INVESTIGATIONS

Kessler (*Cochair*), Palumbo, Unger, Boley and Hall.

FOREST MANAGEMENT REVIEW COMMISSION

Williams (*Cochair*), Fanning, Helmick, Miller and K. Facemyer.

**LEGISLATIVE OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

Plymale (*Cochair*), Wells (*Vice Cochair*), Browning, Edgell, Unger, Boley and Kessler (*ex officio*).

**LEGISLATIVE OVERSIGHT COMMISSION ON
HEALTH AND HUMAN RESOURCES
ACCOUNTABILITY**

Stollings (*Cochair*), Foster, Laird, Unger, Wills, Boley, Hall and Kessler (*ex officio*).

SENATE COMMITTEES

**LEGISLATIVE OVERSIGHT COMMISSION ON
STATE WATER RESOURCES**

Unger (*Cochair*), Green (*Vice Cochair*), Laird, Snyder and Hall.

**LEGISLATIVE OVERSIGHT COMMISSION ON
WORKFORCE INVESTMENT FOR ECONOMIC
DEVELOPMENT**

Facemire (*Cochair*), Klempa, Miller and Sypolt.

**LEGISLATIVE OVERSIGHT COMMITTEE ON THE
REGIONAL JAIL AND CORRECTIONAL FACILITY
AUTHORITY**

Laird (*Cochair*), Green, Tucker, Yost and Barnes.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2011

CHAPTER 1

**(Com. Sub. for S. B. 474 - By Senators Kessler
(Acting President), Prezioso, Beach, Williams,
Edgell, Palumbo, Plymale, Wills,
D. Facemire, Klempa and Yost)**

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-8-16, relating to choice of law products' liability claims that are based upon prescription drug manufacturer's alleged failure to warn.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-8-16, to read as follows:

ARTICLE 8. ACTIONS ON CONTRACTS.

§55-8-16. Choice of Law in Pharmaceutical Product Liability Actions.

- 1 (a) It is public policy of this state that, in determining the
2 law applicable to a product liability claim brought by a

3 nonresident of this state against the manufacturer or
4 distributor of a prescription drug for failure to warn, the duty
5 to warn shall be governed solely by the product liability law
6 of the place of injury (“lex loci delicti”).

7 (b) This section shall be applicable prospectively to all
8 civil actions commenced on or after July 1, 2011.

CHAPTER 2

**(H. B. 3100 - By Delegates Skaff, Brown,
Craig, Morgan, Fragale, Moore, Poore,
Wells, Michael, Caputo and Andes)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §60-3A-18 of the Code of West Virginia, 1931, as amended, relating to permitting the sale of liquor on election day.

Be it enacted by the Legislature of West Virginia:

That §60-3A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-18. Days and hours retail licensees may sell liquor.

1 Retail licensees may not sell liquor on Sundays and
2 Christmas day, or between the hours of twelve midnight and
3 eight o'clock a.m., except that wine and fortified wines may

4 be sold on those days and at such times as authorized in
5 section thirty-four, article eight of this chapter.



CHAPTER 3

**(Com. Sub. for H. B. 3143 - By Delegates Pasdon,
Hall, Craig, R. Phillips, Miley and Boggs)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §19-20-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3E-6 of said code, all relating to increasing penalties for causing injury or death to certain animals used by law enforcement or in law enforcement duties; and providing for restitution to the agency or department that owns or owned the animal.

Be it enacted by the Legislature of West Virginia:

That §19-20-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3E-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-24. Causing death or injury to animals used by law-enforcement officials or by fire prevention or investigation officials; criminal penalties.

1 Any person who, without justification, and with the
2 unlawful intent to inflict serious physical injury or death,

3 causes the death of any trained dog or horse used by law-
4 enforcement officials, the Department of Military Affairs and
5 Public Safety or by fire prevention or investigation officials
6 in the performance of their official duties is guilty of a felony
7 and, upon conviction thereof, shall be fined not less than
8 \$500 nor more than \$5,000 and imprisoned in a correctional
9 facility for a definite term of not less than one year nor more
10 than three years.

11 Any person who, without justification, willfully and
12 unlawfully causes physical injury to any trained dog or horse
13 used by law-enforcement officials, the Department of
14 Military Affairs and Public Safety or by fire prevention or
15 investigation officials in the performance of their official
16 duties is guilty of a misdemeanor and, upon conviction
17 thereof, shall be fined not more than \$500 or confined in jail
18 not more than six months, or both.

19 Any person convicted of a violation of this section shall
20 be ordered to make restitution to the law-enforcement
21 agency, the Department of Military Affairs and Public Safety
22 or to the State Fire Marshal or other fire prevention or
23 investigation department or agency owning the animal for
24 any veterinary bills, and replacement costs of any disabled or
25 killed animal.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-6. Causing death or injury to an explosives detection animal; penalty.

1 Any person who violates the provisions of this article
2 which violation causes death, serious or debilitating bodily
3 injury to an explosives detection animal owned or used by a

4 law-enforcement agency, shall be guilty of a felony and,
5 upon conviction thereof, be committed to the custody of the
6 Division of Corrections for not less than one year nor more
7 than five years or fined not more than \$5,000 or both. Any
8 person convicted of a violation of this section shall be
9 ordered to make restitution to the law-enforcement agency,
10 the Department of Military Affairs and Public Safety or to
11 the State Fire Marshal or other fire prevention or
12 investigation department or agency owning the animal for
13 any veterinary bills, and replacement costs of any disabled or
14 killed animal.

CHAPTER 4

**(S. B. 254 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]**

[Passed February 19, 2011; in effect from passage.]
[Approved by the Governor on March 2, 2011.]

AN ACT to making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2011, to the West Virginia Development Office - Community Development, fund 8746, fiscal year 2011, organization 0307, and to Division of Human Services - Energy Assistance, fund 8755, fiscal year 2011, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2011 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 8746, fiscal year 2011, organization 0307, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

*340-West Virginia Development Office-
Community Development*

Fund 8746 FY 2011 Org 0307

		Activity	Federal Funds
1	1	Unclassified - Total.	096 \$ 10,000,000
2		And, That the total appropriation for the fiscal year ending	
3		June 30, 2011, to fund 8755, fiscal year 2011, organization	
4		0511, be supplemented and amended by increasing an	
5		existing item of appropriation as follows:	

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

*348-Division of Human Services-
Energy Assistance*

Fund 8755 FY 2011 Org 0511

		Activity	Federal Funds
1	1	Unclassified - Total. 096	\$ 10,000,000
2		The purpose of this supplementary appropriation bill is to	
3		supplement and amend by increasing existing items of	
4		appropriation in the aforesaid accounts for the designated	
5		spending units for expenditure during the fiscal year 2011.	



CHAPTER 5

**(S. B. 255 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]**

[Passed February 14, 2011; in effect from passage.]
[Approved by the Governor on February 25, 2011.]

AN ACT making a supplementary appropriation of federal funds from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2011, to a new item of appropriation designated to the Governor’s Office, fund 8742, fiscal year 2011, organization 0100, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 8734, fiscal year 2011,

organization 0932, to the Department of Health and Human Resources - West Virginia Health Care Authority, fund 8851, fiscal year 2011, organization 0507, to the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2011, organization 0511, and to the Department of Transportation - Public Port Authority, fund 8830, fiscal year 2011, organization 0806, by supplementing and amending Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the Budget Bill.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2011, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

EXECUTIVE

283a-Governor's Office

(WV Code Chapter 5)

Fund 8742 FY 2011 Org 0100

			Act- ivity	Federal Funds
1	1	Unclassified - Total.	096	\$ 55,000,000

2 And, That the total appropriation for the fiscal year ending
 3 June 30, 2011, to the fund 8734, fiscal year 2011,
 4 organization 0932, be supplemented and amended by
 5 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF EDUCATION AND THE ARTS

*310-State Board of Rehabilitation -
 Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2011 Org 0932

		Act- ivity	Federal Funds
1	1	Unclassified - Total 096	\$ 19,000,000

2 And, That the total appropriation for the fiscal year ending
 3 June 30, 2011, to fund 8851, fiscal year 2011, organization
 4 0507, be supplemented and amended by increasing an
 5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

316-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2011 Org 0507

		Act- ivity	Federal Funds
1	2	Federal Economic Stimulus. 891	\$ 2,000,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 8722, fiscal year 2011, organization
4 0511, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

318-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2011 Org 0511

		Act- ivity	Federal Funds
1	2	Medical Services. 189	\$170,000,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 8830, fiscal year 2011, organization
4 0806, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF TRANSPORTATION

333-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2011 Org 0806

		Act- ivity	Federal Funds
1	1	Unclassified - Total. 096	\$ 1,044,000
2		The purpose of this supplementary appropriation bill is to	
3		supplement, amend, add a new item and increase existing items of	
4		appropriation in the aforesaid accounts for the designated	
5		spending units for expenditure during the fiscal year 2011.	



CHAPTER 6

**(S. B. 342 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]**

[Passed February 7, 2011; in effect from passage.]
[Approved by the Governor on March 1, 2011.]

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 2011, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 12, 2011, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2010; and further included the estimate of revenues for the fiscal year 2011, less net appropriation balances forwarded and regular appropriations for fiscal year 2011; and

WHEREAS, It appears from the Governor’s Executive Budget document, 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, 2011; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 0105, fiscal year 2011, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

*7-Governor’s Office -
Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2011 Org 0100

		Act- ivity	Federal Funds
1	1	Special Election - Surplus (R)... . 233	\$ 8,000,000

2 Any unexpended balance remaining in the appropriation
3 for Special Election - Surplus (fund 0105, activity 233) at the
4 close of the fiscal year 2011 is hereby reappropriated for
5 expenditure during the fiscal year 2012.

6 The purpose of this bill is to supplement, amend, and add
7 an item of appropriation in the aforesaid account for the
8 designated spending unit for expenditure during the fiscal
9 year 2011.

CHAPTER 7

**(S. B. 617 - By Senators Prezioso, D. Facemire, Unger,
Plymale, McCabe, Laird, Wells, Green, Chafin, Yost,
Edgell, Helmick, Stollings, Miller, Hall and Boley)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on March 23, 2011.]

AN ACT making a supplementary appropriation of federal funds from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2011, to the Department of Education and the Arts - Department of Education and the Arts - Office of the Secretary, fund 8841, fiscal year 2011, organization 0431, and to the Department of Health and Human Resources - Division of Health - West Virginia Safe Drinking Water Treatment, fund 8824, fiscal year 2011, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2011, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 8841, fiscal year 2011, organization 0431, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF EDUCATION AND THE ARTS

*306-Department of Education and the Arts -
Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2011 Org 0431

			Act- ivity	Federal Funds
1	2	Federal Economic Stimulus.. . . .	891	\$ 350,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 8824, fiscal year 2011, organization
4 0506, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

*315-Division of Health -
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2011 Org 0506

		Act- ivity	Federal Funds
1	1	Unclassified - Total 096	\$ 12,000,000
2		The purpose of this supplementary appropriation bill is to	
3		supplement, amend, and increase existing items of	
4		appropriation in the aforesaid accounts for the designated	
5		spending units for expenditure during the fiscal year 2011.	



CHAPTER 8

(S. B. 618 - By Senators Prezioso, D. Facemire, Unger, Plymale, McCabe, Laird, Wells, Green, Chafin, Yost, Edgell, Helmick, Stollings, Miller, Hall and Boley)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on March 23, 2011.]

AN ACT supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2011, organization 0803, and to the Department of Transportation - Office of Administrative Hearings, fund 9027, fiscal year 2011, organization 0808, for the fiscal year ending June 30, 2011.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 2011, which

included the statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2010, and further included the estimate of revenues for the fiscal year 2011, less net appropriation balances forwarded and regular appropriations for the fiscal year 2011; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2011; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2011, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

94-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2011 Org 0803

			Act- ivity	State Road Fund
1	1	Debt Service.....	040	\$ 2,000,000
2	14	Federal Economic Stimulus II. . .	802	140,000,000

3 And, That the items of the total appropriations from the
 4 State Road Fund, to the Department of Transportation -
 5 Division of Highways, fund 9017, fiscal year 2011,
 6 organization 0803, be supplemented and amended by
 7 increasing existing items of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

94-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2011 Org 0803

		Act- ivity	State Road Fund
1	2	Maintenance..... 237	\$ 19,000,000
2	9	Interstate Construction..... 278	35,000,000
3	12	Nonfederal Aid Construction... 281	3,000,000
4	15	Federal Economic Stimulus.... 891	20,000,000

5 And, That the items of the total appropriations from the
 6 State Road Fund, to the Department of Transportation -
 7 Office of Administrative Hearings, fund 9027, fiscal year
 8 2011, organization 0808, be supplemented and amended by
 9 increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

94a-Office of Administrative Appeals

(WV Code Chapters 17C)

Fund 9027 FY 2011 Org 0808

		Act- ivity	State Road Fund
1	1	Unclassified - Total 096	\$ 200,000
2		The purpose of this supplemental appropriation bill is to	
3		supplement, amend, decrease and increase items of appropriation	
4		in the aforesaid accounts for the designated spending units for	
5		expenditure during the fiscal year ending June 30, 2011.	

CHAPTER 9

**(S. B. 619 - By Senators Prezioso, D. Facemire, Unger,
Plymale, McCabe, Laird, Wells, Green, Chafin, Yost,
Edgell, Helmick, Stollings, Miller, Hall and Boley)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on March 23, 2011.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2011, to the Department of Military Affairs and Public Safety - West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2011, organization 0608, to the Department of Military Affairs and Public Safety - West Virginia State Police - Motor Vehicle Inspection Fund, fund 6501, fiscal year 2011, organization 0612, to the Department of Revenue - Office of the Secretary - State Debt

Reduction Fund, fund 7007, fiscal year 2011, organization 0701, and to the Department of Transportation - Public Port Authority - Special Railroad and Intermodal Enhancement Fund, fund 8254, fiscal year 2011, organization 0806, by supplementing and amending the appropriation for the fiscal year ending June 30, 2011.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Military Affairs and Public Safety - West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2011, organization 0608, in the Department of Military Affairs and Public Safety - West Virginia State Police - Motor Vehicle Inspection Fund, fund 6501, fiscal year 2011, organization 0612, in the Department of Revenue - Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2011, organization 0701, and in the Department of Transportation - Public Port Authority - Special Railroad and Intermodal Enhancement Fund, fund 8254, fiscal year 2011, organization 0806, available for expenditure during the fiscal year ending June 30, 2011 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 6362, fiscal year 2011, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

*188-West Virginia Division of Corrections -
Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2011 Org 0608

		Act- ivity	Other Funds
1	1 Personal Services.	001	\$ 100,000
2	2 Annual Increment.	004	5,000
3	3 Employee Benefits.	010	40,000
4	4 Unclassified.	099	112,195

5 And, That the total appropriation for the fiscal year ending
6 June 30, 2011, to fund 6501, fiscal year 2011, organization
7 0612, be supplemented and amended by increasing an
8 existing item of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*189-West Virginia State Police -
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2011 Org 0612

		Act- ivity	Other Funds
1	4 Unclassified.	099	\$ 50,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 7007, fiscal year 2011, organization

4 0701, be supplemented and amended by decreasing an
5 existing item of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF REVENUE

*202-Office of the Secretary -
State Debt Reduction Fund*

(WV Code Chapter 29)

Fund 7007 FY 2011 Org 0701

		Act- ivity	Other Funds
1	1	Unclassified - Total - Transfer. . .	402 \$ 8,934,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2011, to fund 8254, fiscal year 2011,
4 organization 0806, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF TRANSPORTATION

*227-Public Port Authority -
Special Railroad and Intermodal Enhancement Fund*

(WV Code Chapter 17)

Fund 8254 FY 2011 Org 0806

		Act- ivity	Other Funds
1	1	Unclassified - Total. 096	\$ 1,826,500

2 The purpose of this supplementary appropriation bill is to
3 supplement and amend by increasing, decreasing and adding
4 to existing items of appropriation in the aforesaid accounts
5 for the designated spending units for expenditure during
6 fiscal year 2011.



CHAPTER 10

**(S. B. 620 - By Senators Prezioso, D. Facemire, Unger,
Edgell, Plymale, McCabe, Laird, Wells, Green, Chafin,
Yost, Helmick, Stollings, Miller, Boley and Sypolt)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on March 23, 2011.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2011 in the amount of \$7,100,000 from the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, and 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 Auditor’s Office - General Administration, fund 0116, fiscal year 2011, organization 1200, to the Department of Agriculture, fund 0131, fiscal year 2011, organization 1400, to the Department of Administration - Ethics Commission, fund 0223, fiscal year 2011, organization 0220, to the Department of Administration - Public Defender

Services, fund 0226, fiscal year 2011, organization 0221, to the Department of Education - State Department of Education, fund 0313, fiscal year 2011, organization 0402, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, fiscal year 2011, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2011, organization 0511, to the Department of Military Affairs and Public Safety - West Virginia Parole Board, fund 0440, fiscal year 2011, organization 0605, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2011, organization 0608, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2011, organization 0613, to Higher Education - Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2011, organization 0441, and to Higher Education Policy Commission - System Control Account, fund 0586, fiscal year 2011, organization 0442, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.

WHEREAS, The Legislature finds that the account balance in the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 12, 2011, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2010; and further included the estimate of revenues for the fiscal year 2011, less net appropriation balances forwarded and regular appropriations for fiscal year 2011; and

WHEREAS, It appears from the Governor's Executive Budget document, statement of the State Fund, General Revenue, and this legislation there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2011; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2011, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, be decreased by expiring the amount of \$7,100,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year 2011.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0116, fiscal year 2011, organization 1200, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

*8-Auditor's Office-
General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2011 Org 1200

			Act- ivity	General Revenue Funds
1	5	Unclassified - Surplus (R).	097	\$ 2,500,000

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Surplus (fund 0116, activity 097) at the
4 close of the fiscal year 2011 is hereby reappropriated for
5 expenditure during the fiscal year 2012.

6 And, That the total appropriation for the fiscal year
7 ending June 30, 2011, to fund 0131, fiscal year 2011,

8 organization 1400, be supplemented and amended by
9 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2011 Org 1400

		Act- ivity	General Revenue Funds
1	7	Unclassified - Surplus (R). 097	\$ 725,000

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Surplus (fund 0131, activity 097) at the
4 close of the fiscal year 2011 is hereby reappropriated for
5 expenditure during the fiscal year 2012.

6 And, That the total appropriation for the fiscal year ending
7 June 30, 2011, to fund 0223, fiscal year 2011, organization
8 0220, be supplemented and amended by increasing an
9 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

25—Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2011 Org 0220

		Act- ivity	General Revenue Funds
1	1	Unclassified - Surplus 097	\$ 75,000

2 And, That the total appropriation for the fiscal year ending
 3 June 30, 2011, to fund 0226, fiscal year 2011, organization
 4 0221, be supplemented and amended by increasing an
 5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

26--Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2011 Org 0221

		Act- ivity	General Revenue Funds
1	6a	Appointed Counsel	
2	6b	Fees - Surplus (R) 435	\$ 11,500,000

3 Any unexpended balance remaining in the appropriation
 4 for Appointed Counsel Fees - Surplus (fund 0226, activity
 5 435) at the close of the fiscal year 2011 is hereby
 6 reappropriated for expenditure during the fiscal year 2012.

7 And, That the total appropriation for the fiscal year ending
 8 June 30, 2011, to fund 0313, fiscal year 2011, organization
 9 0402, be supplemented and amended by increasing existing
 10 items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

46-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2011 Org 0402

			Act- ivity	General Revenue Funds
1	4	Unclassified - Surplus (R)	097	\$ 526,522
2	6	Increased Enrollment - Surplus . . .	059	2,062,718

3 Any unexpended balance remaining in the appropriation
 4 for Unclassified - Surplus (fund 0313, activity 097) at the
 5 close of the fiscal year 2011 is hereby reappropriated for
 6 expenditure during the fiscal year 2012.

7 And, That the total appropriation for the fiscal year
 8 ending June 30, 2011, to fund 0525, fiscal year 2011,
 9 organization 0506, be supplemented and amended by
 10 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF HEALTH AND HUMAN
 RESOURCES**

62-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2011 Org 0506

		Act- ivity	General Revenue Funds
1	9 Institutional Facilities		
2	Operations - Surplus (R).....	632	\$ 3,961,964

3 Any unexpended balance remaining in the appropriation
4 for Institutional Facilities Operations - Surplus (fund 0525,
5 activity 632) at the close of the fiscal year 2011 is hereby
6 reappropriated for expenditure during the fiscal year 2012.

7 And, That the total appropriation for the fiscal year ending
8 June 30, 2011, to fund 0403, fiscal year 2011, organization
9 0511, be supplemented and amended by increasing an
10 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

65-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2011 Org 0511

		Act- ivity	General Revenue Funds
1	40 Indigent Burials - Surplus (R)...	076	\$ 850,000

2 Any unexpended balance remaining in the appropriation
3 for Indigent Burials - Surplus (fund 0403, activity 076) at the
4 close of the fiscal year 2011 is hereby reappropriated for
5 expenditure during the fiscal year 2012.

6 And, That the total appropriation for the fiscal year ending
 7 June 30, 2011, to fund 0440, fiscal year 2011, organization
 8 0605, be supplemented and amended by increasing an
 9 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

69-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2011 Org 0605

		Act- ivity	General Revenue Funds
1	4	Unclassified - Surplus (R) 097	\$ 31,491

2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Surplus (fund 0440, activity 097) at the
 4 close of the fiscal year 2011 is hereby reappropriated for
 5 expenditure during the fiscal year 2012.

6 And, That the total appropriation for the fiscal year ending
 7 June 30, 2011, to fund 0450, fiscal year 2011, organization
 8 0608, be supplemented and amended by increasing existing
 9 items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*72-Division of Corrections -
Correctional Units*

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

Fund 0450 FY 2011 Org 0608

			Act- ivity		General Revenue Funds
1	3	Unclassified - Surplus (R).....	097	\$	7,100,000
2	12	Payments to Federal, County, and/or			
3	13	Regional Jails - Surplus (R). .	008	\$	6,000,000

4 Any unexpended balance remaining in the appropriation
5 for Unclassified - Surplus (fund 0450, activity 097), and
6 Payments to Federal, County, and/or Regional Jails - Surplus
7 (fund 0450, activity 008) at the close of the fiscal year 2011
8 is hereby reappropriated for expenditure during the fiscal
9 year 2012.

10 And, That the total appropriation for the fiscal year ending
11 June 30, 2011, to fund 0456, fiscal year 2011, organization
12 0613, be supplemented and amended by increasing an
13 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

74-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2011 Org 0613

		Act- ivity	General Revenue Funds
1	4	Unclassified - Surplus (R). 097	\$ 300,000

2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Surplus (fund 0456, activity 097) at the
 4 close of the fiscal year 2011 is hereby reappropriated for
 5 expenditure during the fiscal year 2012.

6 And, That the total appropriation for the fiscal year ending
 7 June 30, 2011, to fund 0589, fiscal year 2011, organization
 8 0441, be supplemented and amended by increasing an
 9 existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

*91-Higher Education Policy Commission -
 Administration -
 Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2011 Org 0441

		Act- ivity	General Revenue Funds
1	1	Unclassified - Surplus (R). 097	\$ 4,800,000

2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Surplus (fund 0589, activity 097) at the

4 close of the fiscal year 2011 is hereby reappropriated for
5 expenditure during the fiscal year 2012.

6 And, That the total appropriation for the fiscal year ending
7 June 30, 2011, to fund 0586, fiscal year 2011, organization
8 0442, be supplemented and amended by increasing an
9 existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

*92-Higher Education Policy Commission -
System -
Control Account*

(WV Code Chapter 18B)

Fund 0586 FY 2011 Org 0442

		Act- ivity	General Revenue Funds
1	5	WVU - School of Health	
2	5a	Sciences - Surplus.	713 \$ 1,000,000

3 Any unexpended balance remaining in the appropriation
4 for WVU - School of Health Sciences - Surplus (fund 0586,
5 activity 713) at the close of the fiscal year 2011 is hereby
6 reappropriated for expenditure during the fiscal year 2012.

7 The purpose of this bill is to expire funds into the
8 unappropriated surplus balance in the state fund, general
9 revenue, and to supplement, amend, add and increase items
10 of appropriation in the aforesaid accounts for the designated
11 spending units for expenditure during the fiscal year 2011.



CHAPTER 11

**(Com. Sub. for H. B. 2012 - By Mr. Speaker,
Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed March 18, 2011; in effect from passage.]
[Approved by the Governor with certain deletions and
reductions on March 23, 2011.]

AN ACT making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

TITLE I — GENERAL PROVISIONS.

1 **Section 1. General policy.** — The purpose of this bill is
2 to appropriate money necessary for the economical and
3 efficient discharge of the duties and responsibilities of the
4 state and its agencies during the fiscal year 2012.

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

6 “Governor” shall mean the Governor of the State of West
7 Virginia.

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

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

13 The “fiscal year 2012” shall mean the period from July 1,
14 2011, through June 30, 2012.

15 “General revenue fund” shall mean the general operating
16 fund of the state and includes all moneys received or
17 collected by the state except as provided in W.Va. Code §12-
18 2-2 or as otherwise provided.

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

22 “From collections” shall mean that part of the total
23 appropriation which must be collected by the spending unit
24 to be available for expenditure. If the authorized amount of
25 collections is not collected, the total appropriation for the
26 spending unit shall be reduced automatically by the amount
27 of the deficiency in the collections. If the amount collected
28 exceeds the amount designated “from collections,” the excess
29 shall be set aside in a special surplus fund and may be
30 expended for the purpose of the spending unit as provided by
31 Article 2, Chapter 11B of the Code.

32 **Sec. 3. Classification of appropriations.** — An
33 appropriation for:

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

39 Unless otherwise specified, appropriations for “personal
40 services” shall include salaries of heads of spending units.

41 “Annual increment” shall mean funds appropriated for
42 “eligible employees” and shall be disbursed only in
43 accordance with Article 5, Chapter 5 of the Code.

44 Funds appropriated for “annual increment” shall be
45 transferred to “personal services” or other designated items
46 only as required.

47 “Employee benefits” shall mean social security matching,
48 workers’ compensation, unemployment compensation,
49 pension and retirement contributions, public employees
50 insurance matching, personnel fees or any other benefit
51 normally paid by the employer as a direct cost of
52 employment. Should the appropriation be insufficient to
53 cover such costs, the remainder of such cost shall be
54 transferred by each spending unit from its “personal services”
55 line item or its “unclassified” line item or other appropriate
56 line item to its “employee benefits” line item. If there is no
57 appropriation for “employee benefits,” such costs shall be
58 paid by each spending unit from its “personal services” line
59 item, its “unclassified” line item or other appropriate line
60 item. Each spending unit is hereby authorized and required to
61 make such payments in accordance with the provisions of
62 Article 2, Chapter 11B of the Code.

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

68 “BRIM Premiums” shall mean the amount charged as
69 consideration for insurance protection and includes the
70 present value of projected losses and administrative expenses.

71 Premiums are assessed for coverages, as defined in the
72 applicable policies, for claims arising from, inter alia, general
73 liability, wrongful acts, property, professional liability and
74 automobile exposures.

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

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

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

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

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

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

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

102 “Capital outlay” shall mean and include buildings, lands
103 or buildings and lands, with such category or item of
104 appropriation to remain in effect as provided by W.Va. Code
105 §12-3-12.

106 From appropriations made to the spending units of state
107 government, upon approval of the governor there may be
108 transferred to a special account an amount sufficient to match
109 federal funds under any federal act.

110 Appropriations classified in any of the above categories
111 shall be expended only for the purposes as defined above and
112 only for the spending units herein designated: *Provided*, That
113 the secretary of each department shall have the authority to
114 transfer within the department those general revenue funds
115 appropriated to the various agencies of the department:
116 *Provided, however*, That no more than five percent of the
117 general revenue funds appropriated to any one agency or
118 board may be transferred to other agencies or boards within
119 the department: and no funds may be transferred to a
120 “personal services” line unless the source funds are also
121 wholly from a “personal services” line, or unless the source
122 funds are from another activity that has exclusively funded
123 employment expenses (any of object codes 001 through 016,
124 160 and 163) for at least twelve consecutive months prior to
125 the time of transfer and the position(s) supported by the
126 transferred funds are also permanently transferred to the
127 receiving agency or board within the department: *Provided*
128 *further*, That the secretary of each department and the
129 director, commissioner, executive secretary, superintendent,
130 chairman or any other agency head not governed by a
131 departmental secretary as established by Chapter 5F of the
132 Code shall have the authority to transfer funds appropriated
133 to “personal services” and “employee benefits” to other lines

134 within the same account and no funds from other lines shall
135 be transferred to the “personal services” line: *And provided*
136 *further*, That the secretary of each department and the
137 director, commissioner, executive secretary, superintendent,
138 chairman or any other agency head not governed by a
139 departmental secretary as established by Chapter 5F of the
140 Code shall have the authority to transfer general revenue
141 funds appropriated to “annual increment” to other general
142 revenue accounts within the same department, bureau or
143 commission for the purpose of providing an annual increment
144 in accordance with Article 5, Chapter 5 of the Code: *And*
145 *provided further*, That no authority exists hereunder to
146 transfer funds into line-items to which no funds are
147 legislatively appropriated: *And provided further*, That if the
148 Legislature by subsequent enactment consolidates agencies,
149 boards or functions, the secretary or other appropriate agency
150 head may transfer the funds formerly appropriated to such
151 agency, board or function in order to implement such
152 consolidation. No funds may be transferred from a Special
153 Revenue Account, dedicated account, capital expenditure
154 account or any other account or fund specifically exempted
155 by the Legislature from transfer, except that the use of the
156 appropriations from the State Road Fund for the office of the
157 Secretary of the Department of Transportation is not a use
158 other than the purpose for which such funds were dedicated
159 and is permitted.

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

166 **Sec. 4. Method of expenditure.** — Money appropriated
167 by this bill, unless otherwise specifically directed, shall be
168 appropriated and expended according to the provisions of

169 Article 3, Chapter 12 of the Code or according to any law
170 detailing a procedure specifically limiting that article.

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

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§10. Special Revenue Appropriations.

§11. State Improvement Fund Appropriations

§12. Specific funds and collection accounts

§13. Appropriations for refunding erroneous payment.

§14. Sinking fund deficiencies.

§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.

1 **Section 1. Appropriations from general revenue.** —
2 From the State Fund, General Revenue, there are hereby
3 appropriated conditionally upon the fulfillment of the
4 provisions set forth in Article 2, Chapter 11B the following
5 amounts, as itemized, for expenditure during the fiscal year
6 2012.

LEGISLATIVE

1-Senate

Fund 0165 FY 2012 Org 2100

	Activity	General Revenue Fund
1	Compensation of Members (R). 003	\$ 1,010,000

2	Compensation and Per Diem of Officers		
3	and Employees (R).	005	3,003,210
4	Employee Benefits (R).	010	597,712
5	Current Expenses and Contingent		
6	Fund (R).	021	561,392
7	Repairs and Alterations (R).	064	210,410
8	Computer Supplies (R).	101	40,000
9	Computer Systems (R).	102	150,000
10	Printing Blue Book (R).	103	150,000
11	Expenses of Members (R).	399	700,000
12	BRIM Premium (R).	913	<u>29,482</u>
13	Total.		\$6,452,206

14 The appropriations for the Senate for the fiscal year 2011
15 are to remain in full force and effect and are hereby
16 reappropriated to June 30, 2012. Any balances so
17 reappropriated may be transferred and credited to the fiscal
18 year 2012 accounts.

19 Upon the written request of the Clerk of the Senate, the
20 auditor shall transfer amounts between items of the total
21 appropriation in order to protect or increase the efficiency of
22 the service.

23 The Clerk of the Senate, with the approval of the
24 President, is authorized to draw his or her requisitions upon
25 the auditor, payable out of the Current Expenses and
26 Contingent Fund of the Senate, for any bills for supplies and
27 services that may have been incurred by the Senate and not
28 included in the appropriation bill, for supplies and services
29 incurred in preparation for the opening, the conduct of the
30 business and after adjournment of any regular or
31 extraordinary session, and for the necessary operation of the
32 Senate offices, the requisitions for which are to be
33 accompanied by bills to be filed with the auditor.

34 The Clerk of the Senate, with the approval of the President,
 35 or the President of the Senate shall have authority to employ
 36 such staff personnel during any session of the Legislature as
 37 shall be needed in addition to staff personnel authorized by the
 38 Senate resolution adopted during any such session. The Clerk of
 39 the Senate, with the approval of the President, or the President
 40 of the Senate shall have authority to employ such staff personnel
 41 between sessions of the Legislature as shall be needed, the
 42 compensation of all staff personnel during and between sessions
 43 of the Legislature, notwithstanding any such Senate resolution,
 44 to be fixed by the President of the Senate. The Clerk is hereby
 45 authorized to draw his or her requisitions upon the auditor for
 46 the payment of all such staff personnel for such services, payable
 47 out of the appropriation for Compensation and Per Diem of
 48 Officers and Employees or Current Expenses and Contingent
 49 Fund of the Senate.

50 For duties imposed by law and by the Senate, the Clerk
 51 of the Senate shall be paid a monthly salary as provided by
 52 the Senate resolution, unless increased between sessions
 53 under the authority of the President, payable out of the
 54 appropriation for Compensation and Per Diem of Officers
 55 and Employees or Current Expenses and Contingent Fund of
 56 the Senate.

57 The distribution of the blue book shall be by the office of
 58 the Clerk of the Senate and shall include seventy-five copies
 59 for each member of the Legislature and two copies for each
 60 classified and approved high school and junior high or
 61 middle school and one copy for each elementary school
 62 within the state.

2-House of Delegates

Fund 0170 FY 2012 Org 2200

1 Compensation of Members (R). 003 \$ 3,000,000

2	Compensation and Per Diem of Officers		
3	and Employees (R).....	005	700,000
4	Current Expenses and Contingent		
5	Fund (R).	021	3,954,031
6	Expenses of Members (R).	399	1,700,000
7	BRIM Premium (R).	913	<u>50,000</u>
8	Total.		\$ 9,404,031

9 The appropriations for the House of Delegates for the
10 fiscal year 2011 are to remain in full force and effect and are
11 hereby reappropriated to June 30, 2012. Any balances so
12 reappropriated may be transferred and credited to the fiscal
13 year 2012 accounts.

14 Upon the written request of the Clerk of the House of
15 Delegates, the auditor shall transfer amounts between items
16 of the total appropriation in order to protect or increase the
17 efficiency of the service.

18 The Clerk of the House of Delegates, with the approval of
19 the Speaker, is authorized to draw his or her requisitions
20 upon the auditor, payable out of the Current Expenses and
21 Contingent Fund of the House of Delegates, for any bills for
22 supplies and services that may have been incurred by the
23 House of Delegates and not included in the appropriation bill,
24 for bills for services and supplies incurred in preparation for
25 the opening of the session and after adjournment, and for the
26 necessary operation of the House of Delegates' offices, the
27 requisitions for which are to be accompanied by bills to be
28 filed with the auditor.

29 The Speaker of the House of Delegates, upon approval of
30 the House committee on rules, shall have authority to employ
31 such staff personnel during and between sessions of the
32 Legislature as shall be needed, in addition to personnel
33 designated in the House resolution, and the compensation of
34 all personnel shall be as fixed in such House resolution for

35 the session, or fixed by the Speaker, with the approval of the
 36 House committee on rules, during and between sessions of
 37 the Legislature, notwithstanding such House resolution. The
 38 Clerk of the House of Delegates is hereby authorized to draw
 39 requisitions upon the auditor for such services, payable out of
 40 the appropriation for the Compensation and Per Diem of
 41 Officers and Employees or Current Expenses and Contingent
 42 Fund of the House of Delegates.

43 For duties imposed by law and by the House of Delegates,
 44 including salary allowed by law as keeper of the rolls, the
 45 Clerk of the House of Delegates shall be paid a monthly
 46 salary as provided in the House resolution, unless increased
 47 between sessions under the authority of the Speaker, with the
 48 approval of the House committee on rules, and payable out
 49 of the appropriation for Compensation and Per Diem of
 50 Officers and Employees or Current Expenses and Contingent
 51 Fund of the House of Delegates.

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2012 Org 2300

1	Joint Committee on		
2	Government and Finance (R).	104	\$ 6,758,015
3	Legislative Printing (R).	105	760,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	147,250
6	Legislative Computer System (R). . .	107	902,500
7	Joint Standing Committee		
8	on Education (R).	108	0
9	BRIM Premium (R).	913	<u>20,900</u>
10	Total.		\$ 8,588,665

11 The appropriations for the joint expenses for the fiscal
 12 year 2011 are to remain in full force and effect and are

13 hereby reappropriated to June 30, 2012. Any balances so
14 reappropriated may be transferred and credited to the fiscal
15 year 2012 accounts.

16 Upon the written request of the Clerk of the Senate, with
17 the approval of the President of the Senate, and the Clerk of
18 the House of Delegates, with the approval of the Speaker of
19 the House of Delegates, and a copy to the Legislative
20 Auditor, the auditor shall transfer amounts between items of
21 the total appropriation in order to protect or increase the
22 efficiency of the service.

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

JUDICIAL

*4-Supreme Court —
General Judicial*

Fund 0180 FY 2012 Org 2400

1	Personal Services (R).....	001	\$ 66,799,069
2	Annual Increment (R).	004	870,250
3	Employee Benefits (R).....	010	23,009,833
4	Children’s Protection Act (R).	090	2,656,478
5	Unclassified (R).	099	22,819,979
6	Judges’ Retirement System (R).	110	2,900,000
7	Retirement Systems -		
8	Unfunded Liability (R).	775	1,054,000
9	BRIM Premium (R).	913	<u>374,015</u>
10	Total.		\$120,483,624

11 The appropriations to the Supreme Court of Appeals for
12 the fiscal years 2010 and 2011 are to remain in full force and

13 effect and are hereby reappropriated to June 30, 2012. Any
 14 balances so reappropriated may be transferred and credited to
 15 the fiscal year 2012 accounts.

16 This appropriation shall be administered by the
 17 Administrative Director of the Supreme Court of Appeals,
 18 who shall draw requisitions for warrants in payment in the
 19 form of payrolls, making deductions therefrom as required by
 20 law for taxes and other items.

21 The appropriations for the Judges' Retirement System
 22 (activity 110) and Retirement Systems - Unfunded Liability
 23 (activity 775) are to be transferred to the Consolidated Public
 24 Retirement Board, in accordance with the law relating
 25 thereto, upon requisition of the Administrative Director of the
 26 Supreme Court of Appeals.

EXECUTIVE

5-Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2012 Org 0100

1	Personal Services.	001	\$ 2,441,095
2	Salary of Governor.	002	150,000
3	Annual Increment.	004	30,360
4	Employee Benefits.	010	783,619
5	Office of Economic Opportunity. . .	034	126,620
6	Unclassified (R).	099	1,026,908
7	GO HELP (R).	116	510,065
8	National Governors' Association. . .	123	60,700
9	Southern States Energy Board.	124	28,732
10	Southern Governors' Association. . .	314	25,000
11	BRIM Premium.	913	156,851
12	P20 Jobs Cabinet.	954	<u>38,000</u>
13	Total.		\$ 5,377,950

14 Any unexpended balances remaining in the appropriations
 15 for Unclassified (fund 0101, activity 099), GO HELP (fund
 16 0101, activity 116), JOBS Fund (fund 0101, activity 665),
 17 and Pharmaceutical Cost Management Council (fund 0101,
 18 activity 796) at the close of the fiscal year 2011 are hereby
 19 reappropriated for expenditure during the fiscal year 2012.

*6-Governor's Office —
 Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2012 Org 0100

1 1 Unclassified - Total (R)... 096 \$ 606,666

2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Total (fund 0102, activity 096) at the close
 4 of the fiscal year 2011 is hereby reappropriated for
 5 expenditure during the fiscal year 2012.

6 Funds are to be used for current general expenses,
 7 including compensation of employees, household
 8 maintenance, cost of official functions and additional
 9 household expenses occasioned by such official functions.

*7-Governor's Office —
 Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2012 Org 0100

1 Any unexpended balances remaining in the appropriation
 2 for Business and Economic Development Stimulus —
 3 Surplus (fund 0105, activity 084), Civil Contingent Fund —
 4 Total (fund 0105, activity 114), May 2009 Flood Recovery
 5 — Surplus (fund 0105, activity 236), Civil Contingent Fund

6 — Total — Surplus (fund 0105, activity 238), Civil
 7 Contingent Fund — Surplus (fund 0105, activity 263),
 8 Business and Economic Development Stimulus (fund 0105,
 9 activity 586), and Civil Contingent Fund (fund 0105, activity
 10 614) at the close of the fiscal year 2011 are hereby
 11 reappropriated for expenditure during the fiscal year 2012.

12 From this appropriation there may be expended, at the
 13 discretion of the Governor, an amount not to exceed \$1,000
 14 as West Virginia’s contribution to the interstate oil compact
 15 commission.

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

*8-Auditor’s Office —
 General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2012 Org 1200

1	Personal Services.	001	\$ 2,307,257
2	Salary of Auditor.	002	95,000
3	Annual Increment.	004	47,686
4	Employee Benefits.	010	833,554
5	Unclassified (R)	099	458,307
6	Volunteer Fire Department Workers		
7	Compensation Subsidy (R).	832	2,500,000
8	BRIM Premium.	913	<u>15,428</u>
9	Total.		\$ 6,257,232

10 Any unexpended balance remaining in the appropriation
 11 for Unclassified (fund 0116, activity 099) and Unclassified -
 12 Surplus (fund 0116, activity 097) at the close of the fiscal

13 year 2011 is hereby reappropriated for expenditure during the
14 fiscal year 2012.

9-Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2012 Org 1300

1	Personal Services.....	001	\$ 1,993,886
2	Salary of Treasurer.....	002	95,000
3	Annual Increment.....	004	24,940
4	Employee Benefits.....	010	686,132
5	Unclassified (R).....	099	693,046
6	Abandoned Property Program.	118	258,601
7	Tuition Trust Fund (R).....	692	147,163
8	BRIM Premium.	913	<u>30,809</u>
9	Total.		\$ 3,929,577

10 Any unexpended balances remaining in the appropriations
11 for Unclassified (fund 0126, activity 099) and Tuition Trust
12 Fund (fund 0126, activity 692) at the close of the fiscal year
13 2011 are hereby reappropriated for expenditure during the
14 fiscal year 2012.

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2012 Org 1400

1	Personal Services.....	001	\$ 4,146,646
2	Salary of Commissioner.....	002	95,000
3	Annual Increment.....	004	101,842
4	Employee Benefits.....	010	1,839,622
5	Animal Identification Program.	039	206,759
6	State Farm Museum.....	055	104,500
7	Unclassified (R).....	099	782,473

8	Gypsy Moth Program (R).	119	1,556,632
9	Huntington Farmers Market.	128	47,500
10	Black Fly Control (R).	137	722,725
11	Donated Foods Program.	363	50,000
12	Predator Control (R).	470	247,000
13	Logan Farmers Market.	501	45,741
14	Bee Research.	691	*76,894
15	Capital Outlay and Maintenance (R).	755	75,000
16	Microbiology Program (R).	785	165,417
17	Moorefield Agriculture Center (R).	786	1,209,513
18	Chesapeake Bay Watershed.	830	125,000
19	BRIM Premium.	913	130,202
20	Threat Preparedness.	942	81,252
21	WV Food Banks.	969	95,000
22	Livestock Care Standards Board.	843	15,000
23	Senior's Farmers' Market Nutrition		
24	Coupon Program.	970	<u>62,173</u>
25	Total.		\$11,991,891

26 Any unexpended balances remaining in the appropriations
 27 for Unclassified (fund 0131, activity 099), Gypsy Moth
 28 Program (fund 0131, activity 119), Black Fly Control (fund
 29 0131, activity 137), Predator Control (fund 0131, activity
 30 470), Capital Outlay and Maintenance (fund 0131, activity
 31 755), Microbiology Program (fund 0131, activity 785), and
 32 Moorefield Agriculture Center (fund 0131, activity 786) at
 33 the close of the fiscal year 2011 are hereby reappropriated for
 34 expenditure during the fiscal year 2012.

35 A portion of the Unclassified appropriation may be
 36 transferred to a special revenue fund for the purpose of
 37 matching federal funds for marketing and development
 38 activities.

*CLERK'S NOTE: The Chief Executive reduced the amount in Item 10, line 14 by \$10,000, from \$86,894 to \$76,894. The total does NOT reflect the reduction by the Governor.

39 From the above appropriation for WV Food Banks
 40 (activity 969), the full appropriation shall be allocated to the
 41 Huntington Food Bank and the Mountaineer Food Bank in
 42 Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2012 Org 1400

1	Personal Services.....	001	\$	511,152
2	Annual Increment.....	004		10,726
3	Employee Benefits.....	010		234,277
4	Unclassified (R).....	099		442,292
5	Soil Conservation Projects (R).....	120		8,398,288
6	Marlinton Flood Wall (R).....	757		*750,000
7	BRIM Premium.....	913		<u>12,969</u>
8	Total.....		\$	11,109,704

9 Any unexpended balances remaining in the appropriations
 10 for Unclassified (fund 0132, activity 099), Soil Conservation
 11 Projects (fund 0132, activity 120), and Marlinton Flood Wall
 12 (fund 0132, activity 757) at the close of the fiscal year 2011
 13 are hereby reappropriated for expenditure during the fiscal
 14 year 2012.

*12-Department of Agriculture —
Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2012 Org 1400

1	Unclassified - Total.....	096	\$	718,278
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*CLERK'S NOTE: The Chief Executive reduced the amount in Item 11, line 6 by \$750,000, from \$1,500,000 to \$750,000. The total does NOT reflect the reduction by the Governor.

2 Any part or all of this appropriation may be transferred to
 3 a special revenue fund for the purpose of matching federal
 4 funds for the above-named program.

*13-Department of Agriculture —
 Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 2012 Org 1400

1	Programs & Awards for 4-H			
2	Clubs and FFA/FHA.	577	\$	15,000
3	Commissioner’s Awards and			
4	Programs.	737		<u>43,650</u>
5	Total.		\$	58,650

*14-Department of Agriculture —
 West Virginia Agricultural Land Protection Authority*

(WV Code Chapter 8A)

Fund 0607 FY 2012 Org 1400

1	Unclassified - Total (R).	096	\$	102,743
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2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Total (fund 0607, activity 096) at the close
 4 of the fiscal year 2011 is hereby reappropriated for
 5 expenditure during the fiscal year 2012.

15-Attorney General

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

Fund 0150 FY 2012 Org 1500

1	Personal Services (R).	001	\$	2,228,612
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2	Salary of Attorney General.	002	95,000
3	Annual Increment.	004	58,175
4	Employee Benefits (R).	010	1,119,944
5	Unclassified (R).	099	792,897
6	Criminal Convictions and		
7	Habeas Corpus Appeals (R).	260	1,187,803
8	Better Government Bureau	740	325,407
9	BRIM Premium	913	<u>118,590</u>
10	Total.		\$ 5,926,428

11 Any unexpended balances remaining in the above
12 appropriations for Personal Services (fund 0150, activity
13 001), Employee Benefits (fund 0150, activity 010),
14 Unclassified (fund 0150, activity 099), Criminal Convictions
15 and Habeas Corpus Appeals (fund 0150, activity 260), and
16 Agency Client Revolving Liquidity Pool (fund 0150, activity
17 362) at the close of the fiscal year 2011 are hereby
18 reappropriated for expenditure during the fiscal year 2012.

19 When legal counsel or secretarial help is appointed by the
20 attorney general for any state spending unit, this account shall
21 be reimbursed from such spending units specifically
22 appropriated account or from accounts appropriated by
23 general language contained within this bill: *Provided*, That
24 the spending unit shall reimburse at a rate and upon terms
25 agreed to by the state spending unit and the attorney general:
26 *Provided, however*, That if the spending unit and the attorney
27 general are unable to agree on the amount and terms of the
28 reimbursement, the spending unit and the attorney general
29 shall submit their proposed reimbursement rates and terms to
30 the Governor for final determination.

16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2012 Org 1600

APPROPRIATIONS

1	Personal Services.....	001	\$	709,091
2	Salary of Secretary of State.....	002		95,000
3	Annual Increment.....	004		10,000
4	Employee Benefits.....	010		467,777
5	Unclassified (R).....	099		9,297
6	BRIM Premium.....	913		<u>16,000</u>
7	Total.....		\$	1,307,165

8 Any unexpended balances remaining in the appropriations
 9 for Unclassified - Surplus (fund 0155, activity 097) and
 10 Unclassified (fund 0155, activity 099) at the close of the
 11 fiscal year 2011 are hereby reappropriated for expenditure
 12 during the fiscal year 2012.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2012 Org 1601

1	Unclassified — Total.....	096	\$	9,761
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DEPARTMENT OF ADMINISTRATION

*18-Department of Administration —
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2012 Org 0201

1	Personal Services.....	001	\$	443,414
2	Annual Increment.....	004		3,026
3	Employee Benefits.....	010		140,462
4	Unclassified.....	099		116,553
5	Financial Advisor (R).....	304		200,000
6	Lease Rental Payments.....	516		16,000,000
7	Design-Build Board.....	540		19,068
8	BRIM Premium.....	913		<u>3,990</u>
9	Total.....		\$	16,926,513

10 Any unexpended balances remaining in the appropriations
 11 for Financial Advisor (fund 0186, activity 304) and Debt
 12 Reduction (fund 0186, activity 635) at the close of the fiscal
 13 year 2011 are hereby reappropriated for expenditure during
 14 the fiscal year 2012.

15 The appropriation for Lease Rental Payments shall be
 16 disbursed as provided by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2012 Org 0205

1 Supplemental Benefits for
 2 Annuitants. 892 \$ 908,000

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

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2012 Org 0209

1 Personal Services. 001 83,590
 2 Annual Increment. 004 1,101
 3 Employee Benefits. 010 34,092
 4 Unclassified. 099 120,500

5	GAAP Project (R).	125	677,490
6	BRIM Premium.	913	<u>4,526</u>
7	Total.		\$ 921,299

8 Any unexpended balance remaining in the appropriation
 9 for GAAP Project (fund 0203, activity 125) at the close of the
 10 fiscal year 2011 is hereby reappropriated for expenditure
 11 during the fiscal year 2012.

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2012 Org 0211

1	Personal Services.	001	\$ 1,494,559
2	Annual Increment.	004	20,000
3	Employee Benefits.	010	688,980
4	Unclassified.	099	600,155
5	Fire Service Fee.	126	14,000
6	Preservation and Maintenance of		
7	Statues and Monuments on		
8	Capitol Grounds.	371	\$ 68,000
9	BRIM Premium.	913	<u>112,481</u>
10	Total.		\$ 2,998,175

11
 12 From the above appropriation for Preservation and
 13 Maintenance of Statues and Monuments on Capitol Grounds
 14 (activity 371), the Division shall consult the Division of
 15 Culture and History and Capitol Building Commission in all
 16 aspects of planning, assessment, maintenance and restoration.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2012 Org 0213

72		APPROPRIATIONS		[Ch. 11
1	Personal Services.	001	\$	722,838
2	Annual Increment.	004		12,095
3	Employee Benefits.	010		291,594
4	Unclassified.	099		144,403
5	BRIM Premium.	913		<u>6,167</u>
6	Total.		\$	1,177,097

7 The division of highways shall reimburse the Unclassified
8 appropriation (fund 2031, activity 099) within the division of
9 purchasing for all actual expenses incurred pursuant to the
10 provisions of W.Va. Code §17-2A-13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2012 Org 0215

1	Unclassified - Total.	096	\$	1,823,244
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24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2012 Org 0217

1	Unclassified - Total.	096	\$	46,550
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2 To pay expenses for members of the commission on
3 uniform state laws.

25-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2012 Org 0219

1	Personal Services.	001	\$	660,635
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2	Annual Increment.....	004	9,097
3	Employee Benefits.....	010	205,833
4	Unclassified (R).....	099	210,443
5	BRIM Premium.....	913	<u>3,885</u>
6	Total.....		\$ 1,089,893

7 Any unexpended balance remaining in the appropriation
 8 for Unclassified (fund 0220, activity 099) at the close of the
 9 fiscal year 2011 is hereby reappropriated for expenditure
 10 during the fiscal year 2012.

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2012 Org 0220

1	Unclassified.....	099	\$ 752,517
2	BRIM Premium.....	913	<u>2,788</u>
3	Total.....		\$ 755,305

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2012 Org 0221

1	Personal Services.....	001	\$ 665,608
2	Annual Increment.....	004	11,280
3	Employee Benefits.....	010	290,966
4	Unclassified.....	099	441,219
5	Public Defender Corporations.....	352	18,216,605
6	Appointed Counsel Fees.....	788	12,223,115
7	BRIM Premium.....	913	<u>4,216</u>
8	Total.....		\$ 31,853,009

9 Any unexpended balance remaining in the above
 10 appropriation for Appointed Counsel Fees and Public

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APPROPRIATIONS

[Ch. 11

11 Defender Corporations (fund 0226, activity 127) at the close
12 of the fiscal year 2011 is hereby reappropriated for
13 expenditure during the fiscal year 2012.

14 The director shall have the authority to transfer funds from
15 the appropriation to Public Defender Corporations (fund
16 0226, activity 352) to Appointed Counsel Fees (fund 0226,
17 activity 788).

*28-Committee for the Purchase of
Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2012 Org 0224

1 Unclassified - Total. 096 \$ 5,055

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2012 Org 0225

1 PEIA Subsidy. 801 \$ 3,500,000

2 The above appropriation for PEIA Subsidy (fund 0200,
3 activity 801) may be transferred to a special revenue fund and
4 shall be utilized by the West Virginia Public Employee's
5 Insurance Agency for the purposes of offsetting benefit
6 changes and to offset the aggregate premium cost-sharing
7 percentage requirements between employers and employees.
8 Such amount shall not be included in the calculation of the
9 plan year aggregate premium cost-sharing percentages
10 between employers and employees.

11 The division of highways, division of motor vehicles,
12 bureau of employment programs, public service commission
13 and other departments, bureaus, divisions, or commissions

14 operating from special revenue funds and/or federal funds
 15 shall pay their proportionate share of the public employees
 16 health insurance cost for their respective divisions.

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2012 Org 0228

1	Forensic Medical Examinations (R)..	683	\$	139,783
2	Federal Funds/Grant Match (R).	749		<u>99,984</u>
3	Total.		\$	239,767

4 Any unexpended balances remaining in the appropriations
 5 for Forensic Medical Examinations (fund 0557, activity 683)
 6 and Federal Funds/Grant Match (fund 0557, activity 749) at
 7 the close of the fiscal year 2011 are hereby reappropriated for
 8 expenditure during the fiscal year 2012.

31-Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2012 Org 0230

1	Unclassified - Total.	096	\$	10,428,479
2	Autism Spectrum Disorder Coverage.	856		<u>497,035</u>
3	Total.		\$	10,925,514

32-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2012 Org 0233

1	Unclassified.	099	\$	998,527
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76		APPROPRIATIONS	[Ch. 11
2	BRIM Premium.	913	<u>4,200</u>
3	Total.		\$ 1,002,727

DEPARTMENT OF COMMERCE

33-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2012 Org 0304

1 Any unexpended balance remaining in the appropriation
 2 for Tourism - Special Projects (fund 0246, activity 859) at the
 3 close of the fiscal year 2011 is hereby reappropriated for
 4 expenditure during the fiscal year 2012.

34-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2012 Org 0305

1	Personal Services.	001	\$ 2,569,163
2	Annual Increment.	004	75,000
3	Employee Benefits.	010	1,025,894
4	Unclassified.	099	699,056
5	BRIM Premium.	913	<u>141,742</u>
6	Total.		\$ 4,510,855

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

35-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2012 Org 0306

1	Personal Services.	001	\$ 1,296,229
2	Annual Increment.	004	36,118
3	Employee Benefits.	010	490,263
4	Unclassified.	099	257,164
5	Mineral Mapping System (R).	207	1,439,326
6	BRIM Premium.	913	<u>20,228</u>
7	Total.		\$ 3,539,328

8 Any unexpended balance remaining in the appropriation
 9 for Mineral Mapping System (fund 0253, activity 207) at the
 10 close of the fiscal year 2011 is hereby reappropriated for
 11 expenditure during the fiscal year 2012.

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

36-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2012 Org 0307

1	Personal Services.	001	\$ 3,382,535
2	Annual Increment.	004	78,732
3	Employee Benefits.	010	1,169,253
4	ARC-WV Home of Your Own		
5	Alliance.	048	36,480
6	Southern WV Career Center.	071	448,476
7	Unclassified.	099	*3,561,758
8	Partnership Grants (R).	131	605,150
9	National Youth Science Camp.	132	0
10	Local Economic Development		
11	Partnerships (R).	133	1,705,440

***CLERK'S NOTE:** The Chief Executive reduced the amount in Item 36, line 7 by \$500,000, from \$4,061,758 to \$3,561,758. The total does NOT reflect the reduction by the Governor.

78	APPROPRIATIONS	[Ch. 11
12	ARC Assessment.	136 152,585
13	Mid-Atlantic Aerospace Complex. . .	231 161,226
14	Guaranteed Work Force Grant (R). . .	242 1,050,234
15	Mingo County Surface Mine Project.	296 0
16	Mingo County Post Mine Land	
17	Use Projects.	841 125,000
18	Robert C. Byrd Institute for Advanced/	
19	Flexible Manufacturing - Technology	
20	Outreach and Programs for Environmental	
21	and Advanced Technologies.	367 474,058
22	Advantage Valley.	389 67,762
23	Chemical Alliance Zone.	390 *45,600
24	WV High Tech Consortium.	391 215,034
25	Regional Contracting Assistance	
26	Center.	418 200,000
27	Highway Authorities.	431 791,435
28	Charleston Farmers Market.	476 91,200
29	International Offices (R).	593 629,867
30	Small Business Development (R). . .	703 200,000
31	WV Manufacturing Extension	
32	Partnership.	731 131,328
33	Polymer Alliance.	754 104,880
34	Regional Councils.	784 401,280
35	Mainstreet Program.	794 186,477
36	National Institute of Chemical Studies	805 64,296
37	Local Economic Development	
38	Assistance (R).	819 *3,900,000
39	I-79 Development Council.	824 *50,050
40	BRIM Premium.	913 26,096
41	4-H Camp Improvements (R).	941 650,000
42	Hatfield McCoy Recreational Trail. .	960 228,000
43	Hardwood Alliance Zone.	992 <u>38,851</u>
44	Total.	\$ 25,319,483

*CLERK'S NOTE: The Chief Executive reduced Item 36, line 23, by \$54,400, from \$100,000 to \$45,600; line 38, by \$3,777,000, from \$7,677,000 to \$3,900,000; and line 39, by \$15,000, from \$65,050 to \$50,050. The total does NOT reflect the reduction by the Governor.

45 Any unexpended balances remaining in the appropriations
46 for Tourism — Unclassified — Surplus (fund 0256, activity
47 075), Unclassified - Surplus (fund 0256, activity 097),
48 Partnership Grants (fund 0256, activity 131), Local
49 Economic Development Partnerships (fund 0256, activity
50 133), Guaranteed Work Force Grant (fund 0256, activity
51 242), Local Economic Development Assistance — Surplus
52 (fund 0256, activity 266), Industrial Park Assistance (fund
53 0256, activity 480), Leverage Technology and Small
54 Business Development Program (fund 0256, activity 525),
55 International Offices (fund 0256, activity 593), Small
56 Business Development (fund 0256, activity 703), Local
57 Economic Development Assistance (fund 0256, activity 819),
58 Economic Development Assistance (fund 0256, activity 900),
59 4-H Camp Improvements (fund 0256, activity 941), and
60 Mining Safety Technology (fund 0256, activity 945) at the
61 close of the fiscal year 2011 are hereby reappropriated for
62 expenditure during the fiscal year 2012.

63 The above appropriation to Local Economic Development
64 Partnerships (activity 133) shall be used by the West Virginia
65 development office for the award of funding assistance to
66 county and regional economic development corporations or
67 authorities participating in the certified development
68 community program developed under the provisions of
69 W.Va. Code §5B-2-14. The West Virginia development
70 office shall award the funding assistance through a matching
71 grant program, based upon a formula whereby funding
72 assistance may not exceed \$34,000 per county served by an
73 economic development or redevelopment corporation or
74 authority.

75 From the above appropriation for Unclassified (fund 0256,
76 activity 099)*\$250,000 is for TechConnect; \$250,000 is for
77 Tamarack Foundation; \$1,250,000 is to be transferred to
78 Development Office Promotion Fund (Fund 3171).

*CLERK'S NOTE: The Chief Executive reduced Item 36, line 76, Tech
Connect, by \$500,000, from \$750,000 to \$250,000.

79 From the above appropriation for Highway Authorities
 80 (fund 0256, activity 431), \$115,187 is for King Coal
 81 Highway Authority; \$115,187 is for Coal Field Expressway
 82 Authority; \$92,150 is for Coal Heritage Highway Authority;
 83 \$92,150 is for Coal Heritage Area Authority; \$46,075 is for
 84 Little Kanawha River Parkway; \$82,935 is for Midland Trail
 85 Scenic Highway Association; \$52,525 is for Shawnee
 86 Parkway Authority; \$92,150 is for Corridor G Regional
 87 Development Authority; \$57,000 is for Corridor H Authority;
 88 and \$46,076 is for Route 2 I68 Highway Authority.

37-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2012 Org 0308

1	Personal Services.....	001	\$	1,744,977
2	Annual Increment.....	004		31,343
3	Employee Benefits.....	010		847,929
4	Unclassified.....	099		748,750
5	BRIM Premium.....	913		<u>47,521</u>
6	Total.....		\$	3,420,520

38-Occupational Safety and Health Fund

(WV Code Chapter 21)

Fund__ FY 2012 Org 0308

1	Personal Services.....	001	\$	*0
2	Employee Benefits.....	010		*0
3	Unclassified.....	099		98,500
4	BRIM Premium.....	913		<u>*0</u>
5	Total.....		\$	*98,500

*CLERK'S NOTE: The Chief Executive reduced Item 38, line 1, by deleting the figure \$200,000; line 2, by deleting the figure \$100,000; and line 4, by deleting the figure \$1,500 and adjusting the total to \$98,500 to reflect the deletions.

39-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2012 Org 0310

1	Personal Services.	001	\$ 9,202,183
2	Annual Increment.	004	305,025
3	Employee Benefits.	010	4,363,520
4	Unclassified.	099	13,620
5	Litter Control Conservation Officers.	564	159,306
6	Upper Mud River Flood Control.	654	180,059
7	Law Enforcement.	806	2,950,110
8	BRIM Premium.	913	<u>293,374</u>
9	Total.		\$ 17,467,197

10 Any unexpended balances remaining in the appropriations
 11 for Land Purchase (fund 0265, activity 761) and Fish
 12 Hatchery Improvements (fund 0265, activity 825) at the close
 13 of the fiscal year 2011 are hereby reappropriated for
 14 expenditure during the fiscal year 2012.

15 Any revenue derived from mineral extraction at any state
 16 park shall be deposited in a special revenue account of the
 17 division of natural resources, first for bond debt payment
 18 purposes and with any remainder to be for park operation and
 19 improvement purposes.

40-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2012 Org 0314

1	Personal Services.	001	\$ 7,477,243
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APPROPRIATIONS

[Ch. 11

2	Annual Increment.....	004	83,914
3	Employee Benefits.....	010	2,866,352
4	Unclassified.	099	1,921,467
5	Coal Dust and Rock Dust Sampling..	270	414,694
6	BRIM Premium.	913	<u>68,134</u>
7	Total.		\$ 12,831,804

8 Included in the above appropriation for Unclassified (fund
9 0277, activity 099) is \$500,000 for the fifth year of Southern
10 West Virginia Community and Technical College Mine
11 Rescue and Rapid Response Team.

41-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2012 Org 0319

1	Personal Services.....	001	\$ 123,170
2	Annual Increment.....	004	1,080
3	Employee Benefits.....	010	35,909
4	Mine Safety Technology Task Force.	061	115,000
5	Unclassified.	099	29,250
6	WV Diesel Equipment Commission.	712	37,050
7	Board of Miners Training and Certification.	667	<u>48,750</u>
9	Total.		\$ 390,209

42-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2012 Org 0320

1	Unclassified.	099	\$ 48,750
2	Coal Forum.	664	<u>29,250</u>
3	Total.		\$ 78,000

4 It is the intent of the Legislature that the Coal Forum
 5 (activity 664) is to expend funds from its appropriation on
 6 technical, environmental, and coal education programs.

43-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2012 Org 0323

1 Unclassified - Total. 096 \$ 95,000

*44-Department of Commerce -
 Office of the Secretary*

(WV Code Chapter 19)

Fund 0606 FY 2012 Org 0327

1 Unclassified - Total. 096 \$ 392,565

45-Division of Energy

(WV Code Chapter 5H)

Fund 0612 FY 2012 Org 0328

1	Unclassified.	099	\$ 1,923,270
2	BRIM Premium.	913	<u>3,297</u>
3	Total.		\$ 1,926,567

4 From the above appropriation for Unclassified (fund 0612,
 5 activity 099) \$693,500 is for West Virginia University and
 6 \$693,500 is for Southern West Virginia Community and
 7 Technical College for the Mine Training and Energy
 8 Technologies Academy.

DEPARTMENT OF EDUCATION*46-State Department of Education -
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2012 Org 0402

1	Personal Services.....	001	\$	253,873
2	Annual Increment.....	004		5,400
3	Employee Benefits.....	010		93,711
4	Unclassified.....	099		<u>2,120,792</u>
5	Total.....		\$	2,473,776

47-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2012 Org 0402

1	Personal Services.....	001	\$	641,634
2	Annual Increment.....	004		22,300
3	Employee Benefits.....	010		264,055
4	Unclassified.....	099		135,152
5	BRIM Premium.....	913		<u>21,694</u>
6	Total.....		\$	1,084,835

48-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2012 Org 0402

1	Personal Services.....	001	\$	3,559,182
2	Annual Increment.....	004		54,000
3	Employee Benefits.....	010		1,095,770

4	Unclassified (R).	099	3,021,000
5	34/1000 Waiver.	139	80,000
6	Increased Enrollment.	140	7,280,000
7	Safe Schools.	143	4,350,951
8	Teacher Mentor (R).	158	842,034
9	National Teacher Certification (R).. .	161	400,000
10	Technology Repair and Modernization	298	951,003
11	HVAC Technicians.	355	482,458
12	Early Retirement Notification		
13	Incentive.	366	275,000
14	MATH Program.	368	396,251
15	Assessment Programs.	396	2,529,284
16	21 st Century Fellows.	507	297,188
17	English as a Second Language.	528	350,000
18	Teacher Reimbursement.	573	297,188
19	Hospitality Training.	600	342,478
20	Low Student Enrollment Allowance.	615	200,000
21	Hi-Y Youth in Government.	616	100,000
22	High Acuity Special Needs (R).	634	1,500,000
23	Foreign Student Education.	636	96,779
24	State Teacher of the Year.	640	44,704
25	Principals Mentorship.	649	79,250
26	Pilot Program of Structured In-School		
27	Alternatives.	826	96,000
28	Elementary/Middle Alternative		
29	Schools.	833	1,000,000
30	21 st Century Innovation Zones.	876	435,694
31	21 st Century Learners (R).	886	2,600,822
32	BRIM Premium.	913	267,786
33	High Acuity Health Care Needs		
34	Program.	920	1,000,000
35	School Nurse Funding.	921	292,267
36	21 st Century Assessment and		
37	Professional Development.	931	4,457,825
38	WV Commission on Holocaust		
39	Education.	935	15,000
40	Regional Education Service		
41	Agencies.	972	3,990,000

86	APPROPRIATIONS		[Ch. 11
42	Sparse Population Allocation.....	973	105,000
43	Local Solutions Dropout		
44	Prevention and Recovery.....	780	2,230,000
45	Educational Program Allowance. . . .	996	<u>*250,000</u>
46	Total.		\$ 45,464,914

47 The above appropriation includes the state board of
48 education and their executive office.

49 Any unexpended balances remaining in the appropriations
50 for Unclassified (fund 0313, activity 099), Teacher Mentor
51 (fund 0313, activity 158), National Teacher Certification
52 (fund 0313, activity 161), High Acuity Special Needs (fund
53 0313, activity 634), Student Enrichment Program (fund 0313,
54 activity 879), and 21st Century Learners (fund 0313, activity
55 886) at the close of the fiscal year 2011 are hereby
56 reappropriated for expenditure during the fiscal year 2012.

57 From the above appropriation for Sparse Population
58 Allocation (activity 973), funding shall be provided in the
59 same manner as in Fiscal Year 2011. It shall be available to
60 those counties whose population falls at or below 2.5 students
61 per square mile and which have more than 650 square miles
62 for transportation purposes.

63 From the above appropriation for Educational Program
64 Allowance (activity 996), \$100,000 shall be expended for
65 Webster County Board of Education for Hacker Valley;
66 \$150,000 for the Randolph County Board of Education for
67 Pickens School*

.*

69 From the above appropriation for Low Student Enrollment
70 Allowance (activity 615), funds shall be allocated to county

***CLERK'S NOTE:** The Chief Executive reduced Item 48, line 45, by \$100,000, from \$350,000 to \$250,000. The total does NOT reflect the reduction by the Governor. The Chief Executive also deleted the language "and \$100,000 for the Preston County Board of Education for Aurora School" in Item 48, lines 67 and 68.

71 boards of education in accordance with the former provisions
72 of W.Va. Code §18-9A-22.

73 The above appropriation for Hospitality Training (activity
74 600), shall be allocated only to entities that have a plan
75 approved for funding by the Department of Education, at the
76 funding level determined by the State Superintendent of
77 Schools. Plans shall be submitted to the State Superintendent
78 of Schools to be considered for funding.

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82 The above appropriation for Local Solutions Dropout
83 Prevention and Recovery shall be transferred to the Local
84 Solutions Dropout Prevention and Recovery Fund.

*49-State Department of Education -
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2012 Org 0402

1	Special Education - Counties.	159	\$	7,271,757
2	Special Education - Institutions.	160		3,764,679
3	Education of Juveniles Held in			
4	Predispositional Juvenile			
5	Detention Centers.	302		610,085
6	Education of Institutionalized			
7	Juveniles and Adults (R).	472		<u>16,754,725</u>
8	Total.		\$	<u>28,401,246</u>

*CLERK’S NOTE: The Chief Executive deleted all language in Item 48, lines 79 through 81, which read “The above appropriation for Math and Science Teacher Loan Assistance Program shall be transferred to the Math and Science Teacher Load Assistance Fund.”

9 Any unexpended balance remaining in the appropriation
 10 for Education of Institutionalized Juveniles and Adults (fund
 11 0314, activity 472) at the close of the fiscal year 2011 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2012.

14 From the above appropriations, the superintendent shall
 15 have authority to expend funds for the costs of special
 16 education for those children residing in out-of-state
 17 placements.

*50-State Department of Education -
 State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2012 Org 0402

1	Other Current Expenses.	022	\$ 154,221,542
2	Advanced Placement.	053	312,508
3	Professional Educators.	151	881,179,854
4	Service Personnel.	152	290,154,327
5	Fixed Charges.	153	105,790,735
6	Transportation.	154	73,044,656
7	Administration.	155	0
8	Professional Student Support Services	655	30,833,273
9	Improved Instructional Programs.	156	*38,528,797
10	21st Century Strategic Technology		
11	Learning Growth.	936	<u>5,528,535</u>
12	Basic Foundation Allowances.		1,585,435,270
13	Less Local Share.		<u>(380,935,952)</u>
14	Total Basic State Aid.		1,204,499,318
15	Public Employees' Insurance		
16	Matching.	012	224,672,696
17	Teachers' Retirement System.	019	61,212,021

*CLERK'S NOTE: The Chief Executive reduced Item 50, line 9, by \$5,841,043, from \$44,840 to \$38,528,797. The total does NOT reflect the reduction by the Governor.

16 Total. \$ 27,411,627

17 Any unexpended balance remaining in the appropriation
 18 for GED Testing (fund 0390, activity 339) at the close of the
 19 fiscal year 2011 is hereby reappropriated for expenditure
 20 during the fiscal year 2012.

*52-State Board of Education -
 Division of Education Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2012 Org 0402

1	Personal Services.	001	\$	441,220
2	Annual Increment.	004		5,196
3	Employee Benefits.	010		116,304
4	Unclassified.	099		<u>156,899</u>
5	Total.		\$	719,619

53-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2012 Org 0403

1	Personal Services.	001	\$	8,369,562
2	Annual Increment.	004		8,780
3	Employee Benefits.	010		2,709,463
4	Unclassified.	099		1,864,531
5	Capital Outlay and Maintenance (R).	755		62,500
6	BRIM Premium.	913		<u>59,087</u>
7	Total.		\$	13,073,923

8 Any unexpended balance remaining in the appropriation
 9 for Capital Outlay and Maintenance (fund 0320, activity 755)
 10 at the close of the fiscal year 2011 is hereby reappropriated
 11 for expenditure during the fiscal year 2012.

DEPARTMENT OF EDUCATION AND THE ARTS

*54-Department of Education and the Arts -
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2012 Org 0431

1	Unclassified (R).....	099	\$ 930,534
2	Center for Professional		
3	Development (R).....	115	2,730,230
4	National Youth Science Camp	132	*290,000
5	WV Humanities Council.	168	450,000
6	Benedum Professional Development		
7	Collaborative (R).....	427	927,500
8	Governor’s Honor Academy (R).	478	600,780
9	Energy Express.	861	470,000
10	BRIM Premium.	913	4,509
11	Special Olympic Games.....	966	<u>25,000</u>
12	Total.		\$ 6,488,553

13 Any unexpended balances remaining in the appropriations
 14 for Unclassified (fund 0294, activity 099), Center for
 15 Professional Development (fund 0294, activity 115), Benedum
 16 Professional Development Collaborative (fund 0294, activity
 17 427), and Governor’s Honor Academy (fund 0294, activity 478)
 18 at the close of the fiscal year 2011 are hereby reappropriated for
 19 expenditure during the fiscal year 2012.

55-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2012 Org 0432

*CLERK’S NOTE: The Chief Executive reduced Item 54, line 4, by \$60,000, from \$350,000 to \$290,000. The total does NOT reflect the reduction by the Governor.

1	Personal Services.....	001	\$	2,763,729
2	Annual Increment.....	004		61,847
3	Employee Benefits.....	010		1,273,976
4	Unclassified (R).....	099		1,032,786
5	Culture and History Programming... ..	732		292,945
6	Capital Outlay and Maintenance (R).	755		100,000
7	Historical Highway Marker			
8	Program (R).....	844		75,185
9	BRIM Premium.	913		<u>33,677</u>
10	Total.		\$	5,634,145

11 Any unexpended balances remaining in the appropriations
 12 for Unclassified - Surplus (fund 0293, activity 097),
 13 Unclassified (fund 0293, activity 099), Capital Outlay, Repairs
 14 and Equipment (fund 0293, activity 589), Capital Outlay,
 15 Repairs and Equipment — Surplus (fund 0293, activity 677),
 16 Capital Outlay and Maintenance (fund 0293, activity 755), and
 17 Historical Highway Marker Program (fund 0293, activity 844)
 18 at the close of the fiscal year 2011 are hereby reappropriated for
 19 expenditure during the fiscal year 2012.

20 The Unclassified appropriation includes funding for the
 21 arts funds, department programming funds, grants, fairs and
 22 festivals and Camp Washington Carver and shall be
 23 expended only upon authorization of the division of culture
 24 and history and in accordance with the provisions of Chapter
 25 5A, Article 3, and Chapter 12 of the Code.

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

32 From the above appropriation for Unclassified (activity
 33 099), \$100,000 shall be used for the Sesquicentennial
 34 Celebration.

56-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2012 Org 0433

1	Personal Services.....	001	\$	1,009,270
2	Annual Increment.....	004		37,080
3	Employee Benefits.....	010		436,444
4	Unclassified.....	099		240,282
5	Services to Blind & Handicapped. . .	181		184,881
6	BRIM Premium.....	913		<u>15,177</u>
7	Total.....		\$	1,923,134

57-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2012 Org 0439

1	Personal Services.....	001	\$	3,254,489
2	Annual Increment.....	004		75,160
3	Employee Benefits.....	010		1,304,379
4	Unclassified (R).....	099		612,473
5	Mountain Stage.....	249		300,000
6	Capital Outlay and Maintenance (R).	755		50,000
7	BRIM Premium.....	913		<u>41,929</u>
8	Total.....		\$	5,638,430

9 Any unexpended balances remaining in the appropriations
10 for Unclassified (fund 0300, activity 099) and Capital Outlay
11 and Maintenance (fund 0300, activity 755) at the close of the
12 fiscal year 2011 are hereby reappropriated for expenditure
13 during the fiscal year 2012.

14 From the above appropriation for Unclassified (fund 0300,
15 activity 099) \$45,000 is for the WV Music Hall of Fame
16 Induction Ceremony.

*58-State Board of Rehabilitation -
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2012 Org 0932

1	Personal Services.....	001	\$	7,537,569
2	Annual Increment.....	004		166,317
3	Independent Living Services (R)...	009		359,810
4	Employee Benefits.....	010		2,769,868
5	Unclassified.....	099		502,066
6	Workshop Development.....	163		2,116,149
7	Supported Employment Extended			
8	Services (R).....	206		100,000
9	Ron Yost Personal Assistance			
10	Fund (R).	407		388,698
11	Employment Attendant Care Program	598		156,065
12	BRIM Premium.....	913		<u>67,033</u>
13	Total.....		\$	14,163,575

14 Any unexpended balance remaining in the appropriation
15 for Independent Living Services (fund 0310, activity 009),
16 Supported Employment Extended Services (fund 0310,
17 activity 206), and Ron Yost Personal Assistance Fund (fund
18 0310, activity 407) at the close of the fiscal year 2011 is
19 hereby reappropriated for expenditure during the fiscal year
20 2012.

21 From the above appropriation for Workshop Development
22 (activity 163), funds shall be used exclusively with the
23 private non-profit community rehabilitation program
24 organizations known as work centers or sheltered workshops.
25 The appropriation shall also be used to continue the support
26 of the program, services, and individuals with disabilities
27 currently in place at those 31 organizations.

DEPARTMENT OF ENVIRONMENTAL PROTECTION*59-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2012 Org 0311

1	Personal Services.	001	\$	74,482
2	Annual Increment.	004		450
3	Employee Benefits.	010		21,221
4	Unclassified.	099		48,185
5	BRIM Premium.	913		<u>684</u>
6	Total.		\$	145,022

60-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2012 Org 0313

1	Personal Services.	001	\$	3,401,095
2	Annual Increment.	004		63,367
3	Employee Benefits.	010		1,391,770
4	Water Resources Protection			
5	and Management.	068		582,257
6	Unclassified.	099		704,425
7	Dam Safety.	607		216,734
8	West Virginia Stream Partners			
9	Program.	637		77,396
10	WV Contribution to River			
11	Commissions.	776		148,485
12	Office of Water Resources			
13	Non-Enforcement Activity.	855		1,218,022
14	BRIM Premium.	913		<u>56,802</u>
15	Total.		\$	7,860,353

16 Any unexpended balance remaining in the appropriation
 17 for Unclassified - Surplus (fund 0273, activity 097) at the
 18 close of fiscal year 2011 is hereby reappropriated for
 19 expenditure during FY 2012.

20 A portion of the appropriation for Unclassified (fund
 21 0273, activity 099) and Dam Safety (fund 0273, activity 607)
 22 may be transferred to the special revenue fund Dam Safety
 23 Rehabilitation Revolving Fund (fund 3025) for the state
 24 deficient dams rehabilitation assistance program.

61-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2012 Org 0325

1	Unclassified.	099	\$	99,770
2	BRIM Premium.	913		<u>2,013</u>
3	Total.		\$	101,783

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*62-Department of Health and Human Resources -
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2012 Org 0501

1	Unclassified.	099	\$	213,343
2	Women’s Commission (R)..	191		180,659
3	Commission for the Deaf			
4	and Hard of Hearing.	704		<u>250,667</u>
5	Total.		\$	644,669

6 Any unexpended balance remaining in the appropriation
 7 for the Women's Commission (fund 0400, fiscal year 2009,
 8 fiscal year 2010, fiscal year 2011, activity 191) at the close
 9 of the fiscal year 2011 is hereby reappropriated for
 10 expenditure during the fiscal year 2012.

*63-Division of Health -
 Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2012 Org 0506

1	Personal Services.	001	\$	8,000,971
2	Annual Increment.	004		207,144
3	Employee Benefits.	010		3,584,212
4	Chief Medical Examiner.	045		4,751,880
5	Unclassified.	099		5,266,327
6	State Aid for Local and			
7	Basic Public Health Services.	184		16,640,755
8	Safe Drinking Water Program.	187		522,984
9	Women, Infants and Children.	210		65,100
10	Early Intervention.	223		3,307,043
11	Cancer Registry.	225		210,184
12	ABCA Tobacco Retailer Education			
13	Program - Transfer.	239		200,000
14	CARDIAC Project.	375		475,000
15	State EMS Technical Assistance.	379		1,437,222
16	Statewide EMS Program Support (R).	383		952,721
17	Primary Care Centers - Mortgage			
18	Finance.	413		688,676
19	Black Lung Clinics	467		198,646
20	Center for End of Life.	545		*250,000
21	Women's Right to Know.	546		15,000

*CLERK'S NOTE: The Chief Executive reduced Item 63, line 20, by \$250,000, from \$500,000 to \$250,000. The total does NOT reflect the reduction by the Governor.

22	Pediatric Dental Services.....	550	151,603
23	Vaccine for Children	551	445,962
24	Adult Influenza Vaccine.	552	65,000
25	Tuberculosis Control	553	247,089
26	Maternal & Child Health Clinics,		
27	Clinicians and Medical Contracts		
28	& Fees (R).....	575	7,227,979
29	Epidemiology Support.	626	1,709,752
30	Primary Care Support.....	628	8,857,770
31	Health Right Free Clinics.....	727	4,499,336
32	Capital Outlay and Maintenance (R).	755	2,125,000
33	Healthy Lifestyles (R).	778	169,285
34	Emergency Response Entities -		
35	Special Projects (R).....	822	744,800
36	Osteoporosis and Arthritis		
37	Prevention.	849	259,404
38	Diabetes Education and Prevention. .	873	105,000
39	Tobacco Education Program (R). ...	906	5,683,830
40	BRIM Premium.	913	211,214
41	State Trauma and Emergency Care		
42	System.....	918	1,837,886
43	Maternal Mortality Review.	834	<u>108,257</u>
44	Total.		\$ 81,473,032

45 Any unexpended balances remaining in the appropriations
46 for Statewide EMS Program Support (fund 0407, activity
47 383), Maternal and Child Health Clinics, Clinicians and
48 Medical Contracts and Fees (fund 0407, activity 575), Capital
49 Outlay and Maintenance (fund 0407, activity 755), Healthy
50 Lifestyles (fund 0407, activity 778), Emergency Response
51 Entities - Special Projects (fund 0407, activity 822),
52 Assistance to Primary Health Care Centers Community
53 Health Foundation (fund 0407, activity 845) and Tobacco
54 Education Program (fund 0407, activity 906) at the close of
55 the fiscal year 2011 are hereby reappropriated for expenditure
56 during the fiscal year 2012.

57 From the above appropriation for Unclassified (activity
58 099), an amount not less than \$100,000 is for the West
59 Virginia Cancer Coalition; \$50,000 shall be expended for the
60 West Virginia Aids Coalition; \$100,000 is for Adolescent
61 Immunization Education; \$73,065 is for informal dispute
62 resolution relating to nursing home administrative appeals;
63 and \$50,000 is for Hospital Hospitality House of Huntington.

64 From the above appropriation for Maternal and Child
65 Health Clinics, Clinicians and Medical Contracts and Fees
66 (fund 0407, activity 575) \$250,000 is for the West Virginia
67 University Center for Excellence in Women's Health; and
68 \$400,000 shall be transferred to the Breast and Cervical
69 Cancer Diagnostic Treatment Fund.

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73 The above appropriation for ABCA Tobacco Retailer
74 Education Program - Transfer (activity 239) shall be
75 transferred to the Alcohol Beverage Control Administration
76 (fund 7352, org 0708) for expenditure.

77 Included in the above appropriation for Primary Care
78 Centers - Mortgage Finance is \$47,500 for the mortgage
79 payment for the Lincoln Primary Care Center, Inc.; \$50,483
80 for the mortgage payment for the Monroe Health Center;
81 \$40,436 for the mortgage payment for Roane County Family
82 Health Care, Inc.; \$45,600 for the mortgage payment for the
83 Primary Care Systems (Clay); \$19,000 for the mortgage
84 payment for the Belington Clinic; \$28,500 for the mortgage
85 payment for the Tri-County Health Clinic; \$14,250 for the

*CLERK'S NOTE: The Chief Executive deleted language in Item 63, lines 70 through 72, which read "From the above appropriation for Unclassified (fund 0407, activity 099) \$30,000 is for the Center for Rural Health Development."

86 mortgage payment for Valley Health Care (Randolph); \$25,236
 87 for the mortgage payment for Family Care Health Center in
 88 Madison; \$7,600 for the mortgage payment for Northern
 89 Greenbrier Health Clinic; \$12,061 for the mortgage payment for
 90 the Women's Care, Inc. (Putnam); \$23,750 for the mortgage
 91 payment for the Preston-Taylor Community Health Centers,
 92 Inc.; \$19,000 for the mortgage payment for the North Fork
 93 Clinic (Pendleton); \$38,000 for the mortgage payment for the
 94 Pendleton Community Care; \$36,480 for the mortgage payment
 95 for Clay-Battelle Community Health Center; \$31,920 for the
 96 mortgage payment for Mountaineer Health Clinic in Paw Paw;
 97 \$12,350 for the mortgage payment for the St. George Medical
 98 Clinic; \$26,600 for the mortgage payment for the Bluestone
 99 Health Center; \$42,750 for the mortgage payment for Wheeling
 100 Health Right; \$45,600 for the mortgage payment for the Minnie
 101 Hamilton Health Care Center, Inc.; \$51,300 for the mortgage
 102 payment for the Shenandoah Valley Medical Systems, Inc.;
 103 \$42,750 for the mortgage payment for the Change, Inc.; and
 104 \$27,510 for the mortgage payment for the Wirt County Health
 105 Services Association.

64-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2012 Org 0506

1	Personal Services.....	001	\$	677,646
2	Annual Increment.....	004		14,869
3	Employee Benefits.....	010		301,548
4	Unclassified.....	099		6,663
5	Special Olympics.....	208		26,074
6	Behavioral Health Program -			
7	Unclassified (R).....	219	*	62,437,972
8	Family Support Act.....	221		1,093,923

*CLERK'S NOTE: The Chief Executive reduced Item 64, line 7, from \$62,937,972 to \$62,437,972. The total does NOT reflect the reduction by the Governor.

38 transferred to the department of agriculture - land division -
 39 farm operating fund (1412) as advance payment for the
 40 purchase of food products; actual payments for such
 41 purchases shall not be required until such credits have been
 42 completely expended.

43 Additional funds have been appropriated in fund 5156,
 44 fiscal year 2012, organization 0506, for the operation of the
 45 institutional facilities. The secretary of the department of
 46 health and human resources is authorized to utilize up to ten
 47 percent of the funds from the Institutional Facilities
 48 Operations line item to facilitate cost effective and cost
 49 saving services at the community level.

*65-Division of Health -
 West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2012 Org 0506

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

3 The above appropriation for Drinking Water Treatment
 4 Revolving Fund - Transfer shall be transferred to the West
 5 Virginia Drinking Water Treatment Revolving Fund or
 6 appropriate bank depository and the Drinking Water
 7 Treatment Revolving - Administrative Expense Fund as
 8 provided by Chapter 16 of the Code.

66-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2012 Org 0510

1	Personal Services.	001	\$	748,458
2	Annual Increment.	004		19,912
3	Employee Benefits.	010		340,299
4	Unclassified.	099		280,893
5	BRIM Premium.	913		<u>9,311</u>
6	Total.		\$	1,398,873

67-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

1	Personal Services.	001	\$	27,315,518
2	Annual Increment.	004		771,638
3	Employee Benefits.	010		12,354,350
4	Unclassified.	099	*	15,452,857
5	Child Care Development.	144		775,933
6	Medical Services Contracts and Office			
7	of Managed Care.	183		1,835,469
8	Medical Services (R).	189		216,461,376
9	Social Services.	195		75,571,254
10	Family Preservation Program.	196		1,565,000
11	Family Resource Networks (R).	274		1,905,367
12	Domestic Violence Legal Services			
13	Fund.	384		400,000
14	James "Tiger" Morton Catastrophic			
15	Illness Fund.	455		698,797
16	MR/DD Waiver.	466		88,753,483
17	Child Protective Services Case			
18	Workers	468		19,142,591
19	OSCAR and RAPIDS	515		5,086,356
20	Title XIX Waiver for Seniors.	533		9,587,500
21	WV Teaching Hospitals			
22	Tertiary/Safety Net.	547		6,356,000

*CLERK'S NOTE: The Chief Executive reduced Item 67, line 4, by \$100,000, from \$15,552,857 to \$15,452,857. The total does NOT reflect the reduction by the Governor.

104	APPROPRIATIONS		[Ch. 11
23	Specialized Foster Care.	566	621,895
24	Child Welfare System	603	1,731,795
25	In-Home Family Education.	688	900,000
26	WV Works Separate State Program..	698	4,750,000
27	Child Support Enforcement.	705	6,135,598
28	Medicaid Auditing.	706	605,618
29	Temporary Assistance for Needy		
30	Families/Maintenance of Effort...	707	22,969,096
31	Child Care Maintenance of		
32	Effort Match.	708	5,693,743
33	Child and Family Services.	736	2,850,000
34	Grants for Licensed Domestic Violence		
35	Programs and Statewide Prevention	750	2,500,000
36	Capital Outlay and Maintenance (R).	755	11,875
37	Medical Services Administrative		
38	Costs.	789	24,501,916
39	Indigent Burials (R).	851	2,550,000
40	BRIM Premium.	913	834,187
41	Rural Hospitals Under 150 Beds. . . .	940	2,596,000
42	Children's Trust Fund - Transfer . . .	951	300,000
43	Traumatic Brain Injury Waiver	835	<u>800,000</u>
44	Total.		\$ 564,485,212

45 Any unexpended balances remaining in the appropriations
46 for Medical Services (fund 0403, activity 189), Family
47 Resource Networks (fund 0403, activity 274), Capital Outlay
48 and Maintenance (fund 0403, activity 755), and Indigent
49 Burials (fund 0403, activity 851) at the close of the fiscal
50 year 2011 are hereby reappropriated for expenditure during
51 the fiscal year 2012.

52 The above appropriation for James "Tiger" Morton
53 Catastrophic Illness Fund (activity 455) shall be transferred
54 to the James "Tiger" Morton Catastrophic Illness Fund (fund
55 5454) as provided by Article 5Q, Chapter 16 of the Code.

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

59 Notwithstanding the provisions of Title I, section three of
60 this bill, the secretary of the department of health and human
61 resources shall have the authority to transfer funds within the
62 above account: *Provided*, That no more than five percent of
63 the funds appropriated to one line item may be transferred to
64 other line items: *Provided, however*, That no funds from
65 other line items shall be transferred to the personal services
66 line item.

67 From the above appropriation for Child Support
68 Enforcement (fund 0403, activity 705) an amount not to
69 exceed \$300,000 may be transferred to a local banking
70 depository to be utilized to offset funds determined to be
71 uncollectible.

72 From the above appropriation for the Grants for Licensed
73 Domestic Violence Programs and Statewide Prevention
74 (activity 750), 50% of the total shall be divided equally and
75 distributed among the fourteen (14) licensed programs and
76 the West Virginia Coalition Against Domestic Violence
77 (WVCADV). The balance remaining in the appropriation for
78 Grants for Licensed Domestic Violence Programs and
79 Statewide Prevention (activity 750), shall be distributed
80 according to the formula established by the Family Protection
81 Services Board.

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

86 The above appropriation for Children's Trust Fund -
87 Transfer (activity 951) shall be transferred to the Children's
88 Fund (fund 5469, org 0511).

89 From the above appropriation for Unclassified (fund 0403,
 90 activity 099) *\$100,000 is provided for a one-time pilot
 91 program for at-risk youth. The funds are to be administered
 92 as a reimbursement grant and may only be drawn down on a
 93 one-to-one matching basis.

94 Included in the above appropriation for Social Services
 95 (fund 0403, activity 195) is an additional \$78,365 for
 96 continuing education requirements relating to the practice of
 97 social work.

98 From the above appropriation for WV Works Separate State
 99 Program (activity 698), \$1,150,000 shall be transferred to the
 100 WV Works Separate State College Program Fund (fund 5467),
 101 and \$3,600,000 shall be transferred to the WV Works Separate
 102 State Two-Parent Program Fund (fund 5468).

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

*68-Department of Military Affairs and Public Safety -
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2012 Org 0601

1	Unclassified (R).	099	\$	812,631
2	Fusion Center (R).	469		503,864
3	BRIM Premium.	913		9,404
4	WV Fire and EMS Survivor			
5	Benefit (R).	939		100,000
6	Homeland State Security Administrative			
7	Agency (R).	953		<u>607,029</u>
8	Total.		\$	2,032,928

*CLERK'S NOTE: The Chief Executive reduced Item 67, line 90, by \$100,000 from \$200,000 to \$100,000.

9 Any unexpended balances remaining in the appropriations
 10 for Unclassified (fund 0430, activity 099), Fusion Center
 11 (fund 0430, activity 469), Capital Outlay (fund 0430, activity
 12 511), WV Fire and EMS Survivor Benefit (fund 0430,
 13 activity 939) and Homeland State Security Administrative
 14 Agency (fund 0430, activity 953), at the close of the fiscal
 15 year 2011 are hereby reappropriated for expenditure during
 16 the fiscal year 2012.

*69-Adjutant General -
 State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2012 Org 0603

1	Unclassified (R).....	099	\$	21,034,798
2	Mountaineer ChalleNGe Academy. .	709		0
3	Capital Outlay and Maintenance. . .	755		<u>0</u>
4	Total.		\$	21,034,798

5 Any unexpended balance remaining in the appropriation
 6 for Unclassified (fund 0433, activity 099) at the close of the
 7 fiscal year 2011 is hereby reappropriated for expenditure
 8 during the fiscal year 2012.

9 Included in the above appropriation for Unclassified (fund
 10 0433, activity 099) is \$400,000 for the purpose of upgrading
 11 the infrastructure at Tri-State Airport.

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

*70-Adjutant General -
Military Fund*

(WV Code Chapter 15)

Fund 0605 FY 2012 Org 0603

1	Unclassified — Total.	096 \$	200,000
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71-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2012 Org 0605

1	Personal Services.	001 \$	186,715
2	Annual Increment.	004	10,680
3	Employee Benefits.	010	259,809
4	Unclassified.	099	228,375
5	Salaries of Members of West Virginia		
6	Parole Board.	227	455,000
7	BRIM Premium.	913	<u>4,712</u>
8	Total.	\$	1,145,291

*72-Division of Homeland Security and
Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2012 Org 0606

1	Personal Services.	001 \$	416,740
2	Annual Increment.	004	8,060
3	Employee Benefits.	010	170,537
4	Unclassified (R).	099	257,713
5	Radiological Emergency		
6	Preparedness.	554	30,000
7	Federal Funds/Grant Match (R).	749	686,806

8	Mine and Industrial Accident Rapid		
9	Response Call Center.	781	514,238
10	Early Warning Flood System (R)... .	877	540,415
11	BRIM Premium.	913	20,336
12	WVU Charleston Poison Control		
13	Hotline...	944	596,100
14	Disaster Mitigation (R).	952	<u>100,000</u>
15	Total.	\$	3,340,945

16 Any unexpended balances remaining in the appropriations
 17 for Unclassified (fund 0443, activity 099), Federal
 18 Funds/Grant Match (fund 0443, activity 749), Early Warning
 19 Flood System (fund 0443, activity 877), and Disaster
 20 Mitigation (fund 0443, activity 952) at the close of the fiscal
 21 year 2011 are hereby reappropriated for expenditure during
 22 the fiscal year 2012.

*73-Division of Corrections -
 Central Office*

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

Fund 0446 FY 2012 Org 0608

1	Personal Services.	001	\$	430,008
2	Annual Increment...	004		7,805
3	Employee Benefits...	010		160,037
4	Unclassified.	099		<u>96,635</u>
5	Total.		\$	694,485

6 Any unexpended balance remaining in the appropriation
 7 for Management Information System (fund 0446, activity
 8 398) at the close of the fiscal year 2011 is hereby
 9 reappropriated for expenditure during the fiscal year 2012.

*74-Division of Corrections -
 Correctional Units*

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

Fund 0450 FY 2012 Org 0608

1	Employee Benefits.....	010	\$	378,294
2	Children’s Protection Act (R).	090		935,021
3	Unclassified	099		1,041,662
4	Charleston Work Release Center.	456		1,541,459
5	Beckley Correctional Center.	490		2,030,837
6	Huntington Work Release Center.	495		908,776
7	Anthony Correctional Center	504		4,612,859
8	Huttonsville Correctional Center	514		20,354,352
9	Northern Correctional Center	534		6,858,582
10	Inmate Medical Expenses (R).	535		24,226,064
11	Pruntytown Correctional Center	543		7,025,261
12	Payments to Federal, County and/or			
13	Regional Jails (R).	555		26,000,000
14	Corrections Academy.....	569		1,281,062
15	Martinsburg Correctional Center.	663		3,364,563
16	Parole Services.....	686		2,951,627
17	Special Services	687		3,175,501
18	Capital Outlay and Maintenance (R).	755		1,000,000
19	McDowell County Correctional			
20	Center.	790		1,949,983
21	Stevens Correctional Center	791		6,474,500
22	Parkersburg Correctional Center.	828		2,416,012
23	St. Mary’s Correctional Center	881		12,439,068
24	Denmar Correctional Center.	882		4,308,062
25	Ohio County Correctional Center.	883		1,605,353
26	Mt. Olive Correctional Complex.	888		19,472,882
27	Lakin Correctional Center.	896		8,163,079
28	BRIM Premium.	913		<u>829,190</u>
29	Total.		\$	165,344,049

30 Any unexpended balances remaining in the appropriations
31 for Children’s Protection Act (fund 0450, activity 090),
32 Unclassified - Surplus (fund 0450, activity 097), Inmate

33 Medical Expenses (fund 0450, activity 535), Payments to
 34 Federal, County and/or Regional Jails (fund 0450, activity
 35 555), and Capital Outlay and Maintenance (fund 0450,
 36 activity 755) at the close of the fiscal year 2011 are hereby
 37 reappropriated for expenditure during the fiscal year 2012.

38 The commissioner of corrections shall have the authority
 39 to transfer between line items appropriated to the individual
 40 correctional units above and may transfer funds from the
 41 individual units to Payments to Federal, County and/or
 42 Regional Jails (fund 0450, activity 555) or Inmate Medical
 43 Expenses (fund 0450, activity 535).

44 From the above appropriation to Unclassified, on July 1,
 45 2011, the sum of \$300,000 shall be transferred to the
 46 department of agriculture - land division - farm operating
 47 fund (1412) as advance payment for the purchase of food
 48 products; actual payments for such purchases shall not be
 49 required until such credits have been completely expended.

75-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2012 Org 0612

1	Personal Services.....	001	\$	44,899,404
2	Annual Increment.....	004		254,160
3	Employee Benefits.....	010		10,050,683
4	Children's Protection Act.....	090		892,770
5	Unclassified.....	099		9,236,038
6	Vehicle Purchase.....	451		887,200
7	Barracks Lease Payments.....	556		246,478
8	Communications and			
9	Other Equipment (R).....	558		1,268,968
10	Trooper Retirement Fund.....	605		5,538,913
11	Handgun Administration Expense..	747		76,106

112		APPROPRIATIONS		[Ch. 11
12	Capital Outlay and Maintenance (R).	755		250,000
13	Retirement Systems - Unfunded			
14	Liability.....	775		22,051,000
15	Automated Fingerprint			
16	Identification System.....	898		661,716
17	BRIM Premium.	913		<u>4,948,648</u>
18	Total.			\$ 101,262,084

19 Any unexpended balances remaining in the appropriations
20 for Communications and Other Equipment (fund 0453,
21 activity 558), and Capital Outlay and Maintenance (fund
22 0453, activity 755) at the close of the fiscal year 2011 are
23 hereby reappropriated for expenditure during the fiscal year
24 2012.

25 From the above appropriation for Personal Services, an
26 amount not less than \$25,000 shall be expended to offset the
27 costs associated with providing police services for the West
28 Virginia State Fair.

76-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2012 Org 0613

1	Personal Services.....	001	\$	0
2	Annual Increment.....	004		0
3	Employee Benefits.....	010		0
4	Unclassified.	099		0
5	Veterans' Field Offices.	228		0
6	Veterans' Nursing Home.	286		0
7	Veterans' Toll Free Assistance Line.	328		0
8	Veterans' Reeducation Assistance (R)	329		0
9	Veterans' Grant Program (R).....	342		0
10	Veterans' Grave Markers.....	473		0
11	Veterans Transportation.....	485		0

Ch. 11]	APPROPRIATIONS		113
12	Memorial Day Patriotic Exercise. . . .	697	0
13	Veterans Cemetery.	808	
14	Educational Opportunities for		
15	Children of Deceased		
16	Veterans (R).	854	0
17	BRIM Premium.	913	<u>0</u>
18	Total.		\$ 0

*77-Division of Veterans' Affairs -
Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2012 Org 0618

1	Personal Services.	001	\$	0
2	Annual Increment.	004		0
3	Employee Benefits.	010		0
4	Unclassified.	099		<u>0</u>
5	Total.		\$	0

78-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2012 Org 0619

1	Unclassified - Total.	096	\$	81,156
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79-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2012 Org 0620

1	Personal Services.	001	\$	435,295
2	Annual Increment.	004		6,025

114	APPROPRIATIONS		[Ch. 11
3	Employee Benefits.....	010	186,647
4	Unclassified.	099	154,393
5	Child Advocacy Centers (R).	458	1,502,300
6	Community Corrections (R).....	561	5,000,000
7	Statistical Analysis Program.	597	53,975
8	Law Enforcement Professional		
9	Standards.....	838	182,500
10	BRIM Premium.	913	<u>1,660</u>
11	Total.		\$ 7,522,795

12 Any unexpended balances remaining in the appropriations
13 for Child Advocacy Centers (fund 0546, activity 458) and
14 Community Corrections (fund 0546, activity 561) at the close
15 of the fiscal year 2011 are hereby reappropriated for
16 expenditure during the fiscal year 2012.

17 From the above appropriation for Child Advocacy Centers
18 (fund 0546, activity 458), the division may retain an amount
19 not to exceed four percent of the total appropriation for
20 administrative purposes.

80-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2012 Org 0621

1	Jones Building Treatment Center....	261	\$ 2,230,048
2	Statewide Reporting Centers (R). ...	262	4,427,511
3	Robert L. Shell Juvenile Center.	267	2,058,505
4	Central Office	701	2,215,102
5	Capital Outlay and Maintenance (R). ..	755	250,000
6	Gene Spadaro Juvenile Center	793	2,115,317
7	Davis Center for Girls.	818	900,000
8	BRIM Premium.	913	96,187
9	WV Industrial Home for Youth (R) .	979	10,795,811
10	Kenneth Honey Rubenstein		
11	Juvenile Center (R)	980	5,383,326

12	Vicki Douglas Juvenile Center.....	981	1,817,695
13	Northern Regional Juvenile Center ..	982	1,344,737
14	Lorrie Yeager Jr. Juvenile Center. . .	983	1,937,266
15	Sam Perdue Juvenile Center	984	1,984,974
16	Tiger Morton Center	985	2,130,233
17	Donald R. Kuhn Juvenile Center . . .	986	4,210,847
18	J.M. "Chick" Buckbee		
19	Juvenile Center	987	<u>2,038,794</u>
20	Total.		\$45,936,353

21 Any unexpended balances remaining in the appropriations
 22 for Statewide Reporting Centers (fund 0570, activity 262),
 23 Capital Outlay and Maintenance (fund 0570, activity 755),
 24 WV Industrial Home for Youth (fund 0570, activity 979),
 25 and Kenneth Honey Rubenstein Juvenile Center (fund 0570,
 26 activity 980) at the close of the fiscal year 2011 are hereby
 27 reappropriated for expenditure during the fiscal year 2012.

28 From the above appropriations, on July 1, 2011, the sum
 29 of \$50,000 shall be transferred to the department of
 30 agriculture - land division - farm operating fund (1412) as
 31 advance payment for the purchase of food products; actual
 32 payments for such purchases shall not be required until such
 33 credits have been completely expended.

34 The director of juvenile services shall have the authority
 35 to transfer between line items appropriated to the individual
 36 juvenile centers above.

81-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2012 Org 0622

1	Personal Services (R).....	001	\$ 1,372,956
2	Annual Increment.....	004	38,090
3	Employee Benefits.....	010	587,688

116 APPROPRIATIONS [Ch. 11

4	Unclassified (R).....	099	313,618
5	BRIM Premium.....	913	<u>9,969</u>
6	Total.....		\$ 2,322,321

7 Any unexpended balances remaining in the appropriations
 8 for Personal Services (fund 0585, activity 001), Equipment
 9 (fund 0585, activity 070), and Unclassified (fund 0585,
 10 activity 099) at the close of the fiscal year 2011 are hereby
 11 reappropriated for expenditure during the fiscal year 2012.

DEPARTMENT OF REVENUE

82-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2012 Org 0701

1	Unclassified - Total (R).....	096	\$ 789,061
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2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Total (fund 0465, activity 096) at the close
 4 of the fiscal year 2011 is hereby reappropriated for
 5 expenditure during the fiscal year 2012.

83-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2012 Org 0702

1	Personal Services (R).....	001	\$ 13,343,243
2	Annual Increment.....	004	300,000
3	Employee Benefits (R).....	010	5,555,712
4	Unclassified (R).....	099	*8,069,623
5	GIS Development Project (R).....	562	150,000

*CLERK'S NOTE: The Chief Executive reduced Item 83, line 4, by \$30,000 from \$8,099,623 to \$8,069,623. The total does NOT reflect the reduction by the Governor.

Ch. 11]	APPROPRIATIONS	117
6	Multi State Tax Commission.	653 77,958
7	BRIM Premium.	913 <u>14,420</u>
8	Total.	\$ 27,540,956

9 Any unexpended balances remaining in the appropriations
10 for Personal Services (fund 0470, activity 001), Employee
11 Benefits (fund 0470, activity 010), Tax Technology Upgrade
12 (fund 0470, activity 094), Unclassified (fund 0470, activity
13 099), Integrated Tax Accounting System (fund 0470, activity
14 292), GIS Development Project (fund 0470, activity 562),
15 and Remittance Processor (fund 0470, activity 570) at the
16 close of the fiscal year 2011 are hereby reappropriated for
17 expenditure during the fiscal year 2012.

84-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2012 Org 0703

1	Unclassified (R).	099 \$ 864,445
2	Pay Equity Reserve.	364 *500,000
3	BRIM Premium.	913 <u>3,628</u>
4	Total.	\$ 1,468,073

5 Any unexpended balance remaining in the appropriation
6 for Unclassified (fund 0595, activity 099) at the close of the
7 fiscal year 2011 is hereby reappropriated for expenditure
8 during the fiscal year 2012.

85-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2012 Org 0709

*CLERK'S NOTE: The Chief Executive reduced Item 84, line 2, by \$100,000 from \$600,000 to \$500,000. The total does NOT reflect the reduction by the Governor.

118		APPROPRIATIONS		[Ch. 11
1	Unclassified (R).....	099	\$	663,956
2	BRIM Premium.....	913		<u>3,166</u>
3	Total.....		\$	667,122

4 Any unexpended balance remaining in the appropriation
5 for Unclassified (fund 0593, activity 099) at the close of the
6 fiscal year 2011 is hereby reappropriated for expenditure
7 during the fiscal year 2012.

*86-Division of Professional and Occupational Licenses -
State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2012 Org 0933

1	Unclassified - Total.....	096	\$	55,973
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DEPARTMENT OF TRANSPORTATION

87-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2012 Org 0804

1	Unclassified (R).....	099	\$	2,394,338
2	BRIM Premium.....	913		<u>186,413</u>
3	Total.....		\$	2,580,751

4 Any unexpended balance remaining in the appropriation
5 for Unclassified (fund 0506, activity 099) at the close of the
6 fiscal year 2011 is hereby reappropriated for expenditure
7 during the fiscal year 2012.

8 From the above appropriation for Unclassified (fund 0506,
9 activity 099), \$30,000 shall be expended for improvements
10 at the Duffield Station.

88-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2012 Org 0805

1 Unclassified - Total. 096 \$ 2,786,009

2 Any unexpended balances remaining in the appropriations
3 for Unclassified (fund 0510, activity 099), and Federal
4 Funds/Grant Match (fund 0510, activity 749) at the close of
5 the fiscal year 2011 are hereby reappropriated for expenditure
6 during the fiscal year 2012.

89-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2012 Org 0806

1 Unclassified (R). 099 \$ 406,072
2 BRIM Premium. 913 2,764
3 Total. \$ 408,836

4 Any unexpended balance remaining in the appropriation
5 for Unclassified (fund 0581, activity 099) at the close of the
6 fiscal year 2011 is hereby reappropriated for expenditure
7 during the fiscal year 2012.

90-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2012 Org 0807

1 Unclassified (R). 099 \$ 1,219,693
2 Civil Air Patrol. 234 155,095
3 Total. \$ 1,374,788

4 Any unexpended balance remaining in the appropriation
 5 for Unclassified (fund 0582, activity 099) at the close of the
 6 fiscal year 2011 is hereby reappropriated for expenditure
 7 during the fiscal year 2012.

8 From the above appropriation for Unclassified, the sum of
 9 \$120,000 shall be distributed equally to each of the twelve
 10 local Civil Air Patrol Squadrons.

DEPARTMENT OF VETERANS' ASSISTANCE

91-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2012 Org 0613

1	Personal Services.	001	\$	1,236,015
2	Annual Increment.	004		28,440
3	Employee Benefits.	010		617,366
4	Unclassified.	099		181,495
5	Veterans' Field Offices.	228		168,345
6	Veterans' Nursing Home.	286		6,799,289
7	Veterans' Toll Free Assistance Line.	328		5,015
8	Veterans' Reeducation Assistance (R)	329		131,604
9	Veterans' Grant Program (R).	342		150,000
10	Veterans' Grave Markers.	473		15,750
11	Veterans Transportation.	485		625,000
12	Memorial Day Patriotic Exercise.	697		20,000
13	Veterans Cemetery.	808		372,338
14	Educational Opportunities for			
15	Children of Deceased Veterans (R)	854		25,000
16	BRIM Premium.	913		<u>23,860</u>
17	Total.		\$	10,399,517

18 Any unexpended balances remaining in the appropriations
 19 for Veterans' Reeducation Assistance (fund 0456, activity
 20 329), Veterans' Grant Program (fund 0456, activity 342),

21 Women’s Veterans’ Monument (fund 0456, activity 385),
 22 Veterans’ Bonus (fund 0456, activity 483), and Educational
 23 Opportunities for Children of Deceased Veterans (fund 0456,
 24 activity 854) at the close of the fiscal year 2011 are hereby
 25 reappropriated for expenditure during the fiscal year 2012.

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

*92-Department of Veterans’ Assistance -
 Veterans’ Home*

(WV Code Chapter 9A)

Fund 0460 FY 2012 Org 0618

1	Personal Services.....	001	\$	723,352
2	Annual Increment.....	004		18,000
3	Employee Benefits.....	010		410,939
4	Unclassified.....	099		<u>6,096</u>
5	Total.....		\$	1,158,387

BUREAU OF SENIOR SERVICES

93-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2012 Org 0508

1 Any unexpended balance remaining in the appropriation
 2 for Unclassified - Total - Surplus (fund 0420, activity 284) at
 3 the close of the fiscal year 2011 is hereby reappropriated for
 4 expenditure during the fiscal year 2012.

HIGHER EDUCATION

*94-West Virginia Council for
Community and Technical College Education -
Control Account*

(WV Code Chapter 18B)

Fund 0596 FY 2012 Org 0420

1	New River Community and		
2	Technical College.	358	\$ 5,778,627
3	West Virginia Council for Community		
4	and Technical Education (R).	392	862,294
5	Eastern West Virginia Community and		
6	Technical College.	412	2,094,052
7	Kanawha Valley Community and		
8	Technical College.	445	4,112,421
9	Southern West Virginia Community		
10	and Technical College.	446	9,181,588
11	West Virginia Northern Community		
12	and Technical College.	447	7,859,711
13	West Virginia University -		
14	Parkersburg.	471	10,416,188
15	Bridgemont Community and		
16	Technical College.	486	3,959,682
17	Mountwest Community and		
18	Technical College.	487	6,020,983
19	Transit Training Partnership.	783	80,000
20	Community College		
21	Workforce Development (R).	878	918,000
22	Blue Ridge Community and		
23	Technical College.	885	3,514,578
24	College Transition Program (R).	887	333,500
25	West Virginia Advance Workforce		
26	Development (R).	893	3,644,020
27	Technical Program Development (R).	894	2,261,100

28	Pierpont Community and Technical		
29	College.	930	<u>8,421,177</u>
30	Total.		\$69,457,921

31 Any unexpended balances remaining in the appropriations
 32 for Unclassified - Surplus (fund 0596, activity 097),
 33 Equipment - Surplus (fund 0596, activity 341), West Virginia
 34 Council for Community and Technical Education (fund 0596,
 35 activity 392), Community College Workforce Development
 36 (fund 0596, activity 878), College Transition Program (fund
 37 0596, activity 887), West Virginia Advance Workforce
 38 Development (fund 0596, activity 893), and Technical
 39 Program Development (fund 0596, activity 894) at the close
 40 of the fiscal year 2011 are hereby reappropriated for
 41 expenditure during the fiscal year 2012.

42 From the above appropriation for New River Community
 43 and Technical College no funds shall be expended for the
 44 pursuit, planning, procurement, lease or construction of any
 45 new student housing on any state lands in Greenbrier County
 46 including any and all lands under the control of New River
 47 Community and Technical College.

48 From the above appropriation for the Community College
 49 Workforce Development (fund 0596, activity 878), \$200,000
 50 shall be expended on the Mine Training Program in Southern
 51 West Virginia.

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

*95-Higher Education Policy Commission -
 Administration -
 Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2012 Org 0441

1	Unclassified.	099	\$ 3,086,949
2	Higher Education Grant Program.	164	38,657,541
3	Tuition Contract Program.	165	1,445,990
4	WVNET.	169	1,941,501
5	PROMISE Scholarship — Transfer.	800	18,500,000
6	HEAPS Grant Program (R).	867	5,005,425
7	BRIM Premium.	913	<u>18,936</u>
8	Total.		\$68,656,342

9 Any unexpended balances remaining in the appropriations
10 for Vice Chancellor for Health Sciences - Rural Health
11 Initiative Program and Site Support (fund 0589, activity 595),
12 Capital Outlay and Maintenance (fund 0589, activity 755),
13 and HEAPS Grant Program (fund 0589, activity 867) at the
14 close of the fiscal year 2011 are hereby reappropriated for
15 expenditure during the fiscal year 2012.

16 The above appropriation for Higher Education Grant
17 Program (activity 164) shall be transferred to the Higher
18 Education Grant Fund (fund 4933, org 0441) established by
19 W.Va. Code §18C-5-3.

20 The above appropriation for PROMISE Scholarship -
21 Transfer (activity 800) shall be transferred to the PROMISE
22 Scholarship Fund (fund 4296, org 0441) established by
23 W.Va. Code §18C-7-7.

*96-Higher Education Policy Commission -
System -
Control Account*

(WV Code Chapter 18B)

Fund 0586 FY 2012 Org 0442

1	WVU School of Health Science -		
2	Eastern Division.	056	\$ 2,637,528
3	West Virginia School of		
4	Osteopathic Medicine.	172	7,555,531
5	Marshall Medical School.	173	12,556,564
6	WVU—School of Health Sciences. .	174	18,098,217
7	WVU School of Health Sciences -		
8	Charleston Division.	175	2,684,094
9	Rural Health Outreach Programs (R).	377	605,594
10	West Virginia School of		
11	Osteopathic Medicine BRIM		
12	Subsidy.	403	174,475
13	Bluefield State College.	408	6,570,942
14	Concord University.	410	10,164,340
15	Fairmont State University.	414	17,803,627
16	Glenville State College.	428	*7,097,804
17	Shepherd University.	432	11,202,798
18	West Liberty University.	439	9,299,524
19	West Virginia State University. . . .	441	10,927,589
20	Marshall University.	448	54,166,744
21	Marshall University Medical School		
22	BRIM Subsidy.	449	1,015,462
23	West Virginia University.	459	*116,272,285
24	West Virginia University School of		
25	Medicine BRIM Subsidy.	460	1,400,038
26	Jackson's Mill (R).	461	350,000
27	West Virginia University Institute		
28	for Technology.	479	8,686,192
29	Vista E-Learning (R).	519	300,000
30	State Priorities - Brownfield Professional		
31	Development (R).	531	805,598
32	Rural Health Initiative - Medical		
33	Schools Support.	581	480,069
34	WV Autism Training Center.	932	2,105,796

*CLERK'S NOTE: The Chief Executive reduced Item 96, line 16, by \$100,000 from \$7,197,804 to \$7,097,804 and on line 23, by \$100,000 from \$116,372,285 to \$116,272,285. The total does NOT reflect the reduction by the Governor.

35	West Virginia State University Land		
36	Grant Match.....	956	1,908,000
37	West Virginia University —		
38	Potomac State	994	<u>4,689,609</u>
39	Total.		\$309,758,420

40 Any unexpended balances remaining in the appropriations
 41 for Rural Health Outreach Programs (fund 0586, activity
 42 377), WVUIT-ABET Accreditation (fund 0586, activity
 43 454), Jackson's Mill (fund 0586, activity 461), Vista E-
 44 Learning (fund 0586, activity 519), and State Priorities-
 45 Brownfield Professional Development (fund 0586, activity
 46 531) at the close of fiscal year 2011 are hereby
 47 reappropriated for expenditure during the fiscal year 2012.

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

59 Included in the above appropriation for WVU - School of
 60 Health Sciences - Charleston Division and Marshall Medical
 61 School, an amount not less than \$5,000 respectively, is to be
 62 used for the West Virginia Academy of Family Physicians
 63 Doc of the Day Program.

64 Included in the above appropriation for WVU — School
 65 of Health Sciences is \$1,000,000 for the Blanchette
 66 Rockefeller Project.

67 Included in the above appropriation for Glenville State
 68 College is *\$300,000 for a 20 county “Hidden Promise”
 69 consortium between the County School Systems and
 70 Glenville State College; \$200,000 for courses offered in
 71 conjunction with the corrections academy*
 72 *

73 Included in the above appropriation for West Virginia
 74 University is \$34,500 for the Marshall and WVU Faculty and
 75 Course Development International Study Project; \$246,429
 76 for the WVU Law School — Skills Program; \$300,000 for
 77 the WVU Coal and Energy Research Bureau to be expended
 78 in consultation with the Board of Coal Mine Health and
 79 Safety, the Mine Safety Technology Task Force, and the DEP
 80 Advisory Council; \$19,714 for the WVU College of
 81 Engineering and Mineral Resources — Diesel Training —
 82 Transfer; \$82,500 for the WVU — Sheep Study; \$500,000
 83 for the Mining Engineering Program; \$500,000 for the Center
 84 for Multiple Sclerosis Program; \$550,000 for the Davis
 85 College of Forestry Agriculture and Consumer Sciences of
 86 which \$112,500 is to be used for Morgantown Farms;
 87 \$112,500 is to be used for Raymond Memorial Farm;
 88 \$112,500 is to be used for Reedsville Farm; \$112,500 is to be
 89 used for Kerneysville Farm; \$200,000 for Reedsville Arena
 90 and Jackson’s Mill Arena; \$80,000 for a Landscape Architect
 91 at Davis College of Forestry Agriculture and Consumer
 92 Sciences; \$100,000 for the WVU — Soil Testing Program;
 93 \$100,000 for a veterinarian; \$50,000 for the WVU Cancer
 94 Study; \$220,000 for the WVU Petroleum Engineering
 95 Program; \$150,000 for the WV Alzheimer Disease Register;
 96 * * and 100,000 for
 97 the rifle team.

*CLERK’S NOTE: The Chief Executive reduced Item 96, line 68, by \$50,000, from \$350,000 to \$300,000, on lines 71 and 72, deleting the semicolon and the words “and \$50,000 to upgrade the security system at the corrections academy”, and deleting the language in Item 96, line 96, which read “\$100,000 is for the Aquaculture Program” and the semicolon.

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APPROPRIATIONS

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98 Included in the above appropriation for Marshall Medical
99 School is \$417,351 for the Marshall University Forensic Lab
100 and \$275,061 for the Marshall University Center for Rural
101 Health.

102 Included in the above appropriation for Marshall
103 University is \$181,280 for the Marshall University - Southern
104 WV CTC 2+2 Program and \$175,000 for the Luke Lee
105 Listening Language & Learning Lab.

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

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

110 Included in the above appropriation for Jackson's Mill is
111 \$150,000 for the Jackson's Mill Fire Academy.

112 From the above appropriation for Rural Health Outreach
113 Programs (activity 377) includes rural health activities and
114 programs; rural residency development and education; and
115 rural outreach activities. These funds shall be dispersed
116 equally among the three (3) medical schools.

117 From the above appropriation for WVU - Potomac State
118 is \$50,000 for maintenance, repairs and equipment, \$75,000
119 for Potomac State Farms for maintenance, repairs, and
120 equipment and \$82,500 for the Potomac State Equine
121 Program.

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

126 From the above appropriations to the respective medical
127 schools, the line items for BRIM subsidies funding shall be

128 paid to the Board of Risk and Insurance Management as a
 129 general revenue subsidy against the "Total Premium Billed"
 130 to each institution as part of the full cost of their malpractice
 131 insurance coverage.

132 Total TITLE II, Section 1 - General Revenue
 133 (Including claims against the state) \$ 4,014,121,000

1 **Sec. 2. Appropriations from state road fund.** - From the
 2 state road fund there are hereby appropriated conditionally
 3 upon the fulfillment of the provisions set forth in Article 2,
 4 Chapter 11B of the Code the following amounts, as itemized,
 5 for expenditure during the fiscal year 2012.

DEPARTMENT OF TRANSPORTATION

97-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2012 Org 0802

	Activity	State Road Fund
1	Personal Services. 001	\$ 14,907,549
2	Annual Increment. 004	318,000
3	Employee Benefits. 010	7,147,951
4	Unclassified. 099	<u>18,205,225</u>
5	Total.	\$ 40,578,725

98-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2012 Org 0803

1	Debt Service.....	040	\$	49,900,000
2	Maintenance.....	237		326,096,000
3	Maintenance, Contract Paving and			
4	Secondary Road Maintenance....	272		45,000,000
5	Bridge Repair and Replacement....	273		30,000,000
6	Inventory Revolving.	275		4,000,000
7	Equipment Revolving.	276		15,000,000
8	General Operations.	277		53,848,821
9	Interstate Construction.....	278		150,000,000
10	Other Federal Aid Programs.	279		300,700,000
11	Appalachian Programs.....	280		115,000,000
12	Nonfederal Aid Construction.....	281		15,000,000
13	Highway Litter Control.	282		1,680,000
14	Federal Economic Stimulus.....	891		<u>20,000,000</u>
15	Total.			\$1,126,224,821

16 The above appropriations are to be expended in
17 accordance with the provisions of chapters seventeen and
18 seventeen-c of the code.

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

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

30 It is the intent of the Legislature to capture and match all
31 federal funds available for expenditure on the Appalachian
32 highway system at the earliest possible time. Therefore,
33 should amounts in excess of those appropriated be required
34 for the purposes of Appalachian programs, funds in excess of

35 the amount appropriated may be made available upon
 36 recommendation of the commissioner and approval of the
 37 governor. Further, for the purpose of Appalachian programs,
 38 funds appropriated to line items may be transferred to other
 39 line items upon recommendation of the commissioner and
 40 approval of the governor.

99-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2012 Org 0808

1 Unclassified - Total. 096 \$ 1,951,979
 2 Total TITLE II, Section 2 - State Road Fund
 3 (Including claims against the state) \$ 1,171,146,346

1 **Sec. 3. Appropriations from other funds.** - From the
 2 funds designated there are hereby appropriated conditionally
 3 upon the fulfillment of the provisions set forth in Article 2,
 4 Chapter 11B of the Code the following amounts, as itemized,
 5 for expenditure during the fiscal year 2012.

LEGISLATIVE

100-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2012 Org 2300

			Other
			Fund
	Activity		
1	Personal Services.	001	\$ 286,000
2	Annual Increment.	004	6,200
3	Employee Benefits.	010	124,200

132	APPROPRIATIONS		[Ch. 11
4	Unclassified.	099	135,603
5	Economic Loss Claim Payment		
6	Fund (R).	334	<u>3,390,975</u>
7	Total.		\$ 3,942,978

8 Any unexpended balance remaining in the appropriation
9 for Economic Loss Claim Payment Fund (fund 1731, activity
10 334) at the close of the fiscal year 2011 is hereby
11 reappropriated for expenditure during the fiscal year 2012.

JUDICIAL

*101-Supreme Court -
Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2012 Org 2400

1	Unclassified - Total.	096	\$ 1,000,000
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EXECUTIVE

*102-Auditor's Office -
Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2012 Org 1200

1	Personal Services.	001	\$ 432,487
2	Annual Increment.	004	9,300
3	Employee Benefits.	010	187,360
4	Unclassified.	099	<u>884,771</u>
5	Total.		\$ 1,513,918

6 There is hereby appropriated from this fund, in addition to
7 the above appropriation, the necessary amount for the

8 expenditure of funds other than personal services or
 9 employee benefits to enable the division to pay the direct
 10 expenses relating to land sales as provided in chapter eleven-
 11 a of the West Virginia Code.

12 The total amount of this appropriation shall be paid from
 13 the special revenue fund out of fees and collections as
 14 provided by law.

*103-Auditor's Office -
 Local Government Purchasing Card Expenditure Fund*

(WV Code Chapter 6)

Fund 1224 FY 2012 Org 1200

1	Unclassified - Total.	096	\$	154,922
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*104-Auditor's Office -
 Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2012 Org 1200

1	Personal Services.	001	\$	1,187,265
2	Annual Increment.	004		18,316
3	Employee Benefits.	010		509,929
4	Unclassified.	099		<u>1,471,122</u>
5	Total.		\$	3,186,632

*105-Auditor's Office -
 Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1233 FY 2012 Org 1200

134

APPROPRIATIONS

[Ch. 11

1 Unclassified - Total. 096 \$ 400,000

2 Fifty percent of the deposits made into this fund shall be
3 transferred to the Treasurer’s Office - Technology Support
4 and Acquisition Fund (fund 1329, org 1300) for expenditure
5 for the purposes described in W.Va. Code §12-3-10c.

*106-Auditor’s Office -
Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2012 Org 1200

1 Unclassified - Total. 096 \$ 4,234,315

*107-Auditor’s Office -
Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2012 Org 1200

1	Personal Services.	001	\$ 2,466,793
2	Annual Increment.	004	39,288
3	Employee Benefits.	010	899,431
4	Unclassified.	099	<u>815,915</u>
5	Total.		\$ 4,221,427

*108-Treasurer’s Office -
College Prepaid Tuition and Savings Program
Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2012 Org 1300

1 Unclassified - Total. 096 \$ 1,408,631

*109-Treasurer's Office -
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 2012 Org 1300

1 Unclassified - Total. 096 \$ 476,649

*110-Department of Agriculture -
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 3,728,297

*111-Department of Agriculture -
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2012 Org 1400

1	Personal Services.	001	\$ 54,339
2	Annual Increment.	004	998
3	Employee Benefits.	010	16,094
4	Unclassified.	099	<u>975,996</u>
5	Total.		\$ 1,047,427

*112-Department of Agriculture -
General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 2012 Org 1400

136 APPROPRIATIONS [Ch. 11

1 Unclassified - Total. 096 \$ 210,000

2 The above appropriation shall be expended in accordance
3 with Article 26, Chapter 19 of the Code.

*113-Department of Agriculture -
Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 1,515,706

*114-Department of Agriculture -
Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 4,564,268

*115-Department of Agriculture -
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 25,000

*116-Attorney General -
Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2012 Org 1500

Ch. 11] APPROPRIATIONS 137

1	Personal Services.....	001	\$	266,410
2	Annual Increment.....	004		2,437
3	Employee Benefits.....	010		82,590
4	Unclassified.....	099		<u>156,266</u>
5	Total.....		\$	507,703

*117-Attorney General -
Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2012 Org 1500

1	Unclassified - Total.....	096	\$	266,841
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*118-Attorney General -
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2012 Org 1500

1	Unclassified - Total.....	096	\$	901,135
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*119-Secretary of State -
Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2012 Org 1600

1	Personal Services.....	001	\$	684,700
2	Annual Increment.....	004		5,160
3	Employee Benefits.....	010		286,882
4	Unclassified.....	099		<u>279,243</u>
5	Total.....		\$	1,255,985

*120-Secretary of State -
General Administrative Fees Account*

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2012 Org 1600

1	Personal Services.....	001	\$	827,959
2	Annual Increment.....	004		11,000
3	Employee Benefits.....	010		506,004
4	Unclassified.	099		1,199,542
5	Technology Improvements.....	599		<u>750,000</u>
6	Total.		\$	3,294,505

DEPARTMENT OF ADMINISTRATION

*121-Department of Administration -
Office of the Secretary
Employee Pension and Health Care Benefit Fund*

(WV Code Chapter 18)

Fund 2044 FY 2012 Org 0201

1	Unclassified - Total.	096	\$	34,216,000
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2 The above appropriation for Unclassified - Total (fund
3 2044, activity 096) shall be transferred to the Consolidated
4 Public Retirement Board - West Virginia Teachers'
5 Retirement System Employers Accumulation Fund (fund
6 2601).

122-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2012 Org 0210

1	Personal Services.....	001	\$ 16,542,399
2	Annual Increment.....	004	342,459
3	Employee Benefits.....	010	6,046,770
4	Unclassified.....	099	<u>15,214,176</u>
5	Total.....		\$ 38,145,804

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

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

*123-Division of Purchasing -
 Vendor Fee Fund*

(WV Code Chapter 5A)

Fund 2263 FY 2012 Org 0213

1	Personal Services.....	001	\$ 491,919
2	Annual Increment.....	004	7,561
3	Employee Benefits.....	010	168,831
4	Unclassified.....	099	<u>238,204</u>
5	Total.....		\$ 906,515

*124-Division of Purchasing -
 Purchasing Improvement Fund*

(WV Code Chapter 5A)

Fund 2264 FY 2012 Org 0213

140	APPROPRIATIONS	[Ch. 11
1	Personal Services..... 001	\$ 235,435
2	Annual Increment..... 004	4,102
3	Employee Benefits..... 010	82,385
4	Unclassified. 099	<u>234,329</u>
5	Total.	\$ 556,251

125-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2012 Org 0222

1	Personal Services..... 001	\$ 2,803,062
2	Annual Increment..... 004	72,348
3	Employee Benefits..... 010	1,059,253
4	Unclassified. 099	<u>1,207,158</u>
5	Total.	\$ 5,141,821

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

126-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2012 Org 0228

1	Unclassified - Total (R). 096	\$ 552,393
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2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Total (fund 2521, activity 096, fiscal year
4 2011) at the close of the fiscal year 2011 is hereby
5 reappropriated for expenditure during the fiscal year 2012.

*127-Office of Technology -
Chief Technology Officer Administration Fund*

(WV Code Chapter 5A)

Fund 2531 FY 2012 Org 0231

- 1 Unclassified - Total. 096 \$ 1,886,044
- 2 From the above fund, the provisions of W.Va. Code §11B-
- 3 2-18 shall not operate to permit expenditures in excess of the
- 4 funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

128-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2012 Org 0305

- 1 Personal Services. 001 \$ 670,778
- 2 Annual Increment. 004 16,620
- 3 Employee Benefits. 010 230,026
- 4 Unclassified. 099 363,348
- 5 Total. \$ 1,280,772

*129-Division of Forestry -
Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2012 Org 0305

- 1 Unclassified - Total. 096 \$ 143,767

*130-Division of Forestry -
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2012 Org 0305

142 APPROPRIATIONS [Ch. 11

1 Unclassified - Total. 096 \$ 827,462

*131-Geological and Economic Survey-
Geological and Analytical Services Fund*

(WV Code Chapter 29)

Fund 3100 FY 2012 Org 0306

1	Personal Services.	001	\$	25,821
2	Employee Benefits.	010		2,401
3	Unclassified.	099		<u>190,057</u>
4	Total.		\$	<u>218,279</u>

5 The above appropriation shall be used in accordance with
6 W.Va. Code §29-2-4.

*132-West Virginia Development Office -
Department of Commerce
Marketing and Communications Operating Fund*

(WV Code Chapter 5B)

Fund 3002 FY 2012 Org 0307

1 Unclassified - Total. 096 \$ 3,035,336

*133-West Virginia Development Office -
Broadband Deployment Fund*

(WV Code Chapter 31)

Fund 3174 FY 2012 Org 0307

1 Unclassified - Total. 096 \$ 5,000,000

*134-Division of Labor -
Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2012 Org 0308

1	Personal Services.....	001	\$	1,010,300
2	Annual Increment.....	004		15,777
3	Employee Benefits.....	010		440,904
4	Unclassified.....	099		<u>691,977</u>
5	Total.....		\$	2,158,958

*135-Division of Labor -
Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2012 Org 0308

1	Personal Services.....	001	\$	91,696
2	Annual Increment.....	004		1,352
3	Employee Benefits.....	010		45,637
4	Unclassified.....	099		<u>49,246</u>
5	Total.....		\$	187,931

*136-Division of Labor -
Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2012 Org 0308

1	Unclassified - Total.....	096	\$	138,025
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*137-Division of Labor -
Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2012 Org 0308

144	APPROPRIATIONS		[Ch. 11
1	Unclassified - Total.	096	\$ 108,117

*138-Division of Labor -
State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2012 Org 0308

1	Personal Services.	001	\$ 102,905
2	Annual Increment.	004	411
3	Employee Benefits.	010	31,997
4	Unclassified.	099	46,002
5	BRIM Premium.	913	<u>3,404</u>
6	Total.		\$ 184,719

*139-Division of Labor -
Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2012 Org 0308

1	Unclassified - Total.	096	\$ 50,000
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*140-Division of Natural Resources -
License Fund - Wildlife Resources*

(WV Code Chapter 20)

Fund 3200 FY 2012 Org 0310

1	Wildlife Resources.	023	\$ 5,550,693
2	Administration.	155	1,308,476
3	Capital Improvements and		
4	Land Purchase (R).	248	1,378,545
5	Law Enforcement.	806	<u>5,545,677</u>
6	Total.		\$ 13,783,391

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

4 Any unexpended balances remaining in the appropriations
 5 for Capital Improvements and Land Purchase (fund 3200,
 6 activity 248) at the close of the fiscal year 2011 are hereby
 7 reappropriated for expenditure during the fiscal year 2012.

*141-Division of Natural Resources -
 Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Fund 3202 FY 2012 Org 0310

1 Unclassified - Total. 096 \$ 75,000

*142-Division of Natural Resources -
 Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2012 Org 0310

1	Personal Services.	001	\$	698,662
2	Annual Increment.	004		15,000
3	Employee Benefits.	010		315,166
4	Unclassified.	099		<u>297,043</u>
5	Total.		\$	1,325,871

*143-Division of Natural Resources -
 Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2012 Org 0310

146	APPROPRIATIONS			[Ch. 11
1	Personal Services.....	001	\$	131,864
2	Annual Increment.....	004		2,160
3	Employee Benefits.....	010		53,526
4	Unclassified.....	099		<u>215,315</u>
5	Total.....		\$	402,865

*144-Division of Natural Resources -
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2012 Org 0310

1	Unclassified - Total.....	096	\$	135,748
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*145-Division of Natural Resources -
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2012 Org 0310

1	Unclassified - Total.....	096	\$	20,000
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*146-Division of Miners' Health, Safety and Training -
Special Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2012 Org 0314

1	Personal Services.....	001	\$	342,984
2	Annual Increment.....	004		900
3	Employee Benefits.....	010		127,722
4	WV Mining Extension Service.	026		150,000
5	Unclassified.....	099		<u>3,476,900</u>
6	Total.....		\$	4,098,506

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*147-Division of Energy -
Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2012 Org 0328

1 Energy Assistance - Total. 647 \$ 500,000

*148-Division of Energy -
Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3011 FY 2012 Org 0328

1 Unclassified - Total. 096 \$ 837,014

DEPARTMENT OF EDUCATION

*149-State Board of Education -
Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2012 Org 0402

1 Unclassified - Total. 096 \$ 801,202

*150-State Department of Education -
School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2012 Org 0402

1 Personal Services. 001 \$ 808,843

2 Annual Increment. 004 9,300

148	APPROPRIATIONS	[Ch. 11
3	Employee Benefits.....	010 279,944
4	Unclassified.....	099 <u>271,715</u>
5	Total.....	\$ 1,369,802

6 The above appropriation for the administrative expenses
7 of the school building authority shall be paid from the interest
8 earnings on debt service reserve accounts maintained on
9 behalf of said authority.

*151-State Department of Education -
FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 2012 Org 0402

1	Personal Services.....	001 \$ 841,255
2	Annual Increment.....	004 13,000
3	Employee Benefits.....	010 323,712
4	Unclassified.....	099 <u>785,950</u>
5	Total.....	\$ 1,963,917

DEPARTMENT OF EDUCATION AND THE ARTS

*152-Office of the Secretary -
Lottery Education Fund Interest Earnings -
Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2012 Org 0431

1 Any unexpended balance remaining in the appropriation
2 for EPSCoR (fund 3508, activity 571), Educational
3 Enhancements (fund 3508, activity 695), and Literacy Project
4 (fund 3508, activity 899) at the close of the fiscal year 2011
5 are hereby reappropriated for expenditure during the fiscal
6 year 2012.

*153-Division of Culture and History –
Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2012 Org 0432

1 Unclassified - Total 096 \$ 1,202,652

*154-State Board of Rehabilitation -
Division of Rehabilitation Services -
West Virginia Rehabilitation Center -
Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2012 Org 0932

1 Unclassified - Total. 096 \$ 2,905,360

DEPARTMENT OF ENVIRONMENTAL PROTECTION

155-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2012 Org 0312

1	Personal Services.	001	\$	586,841
2	Annual Increment.	004		7,920
3	Employee Benefits.	010		208,108
4	Unclassified.	099		<u>1,770,680</u>
5	Total.		\$	<u>2,573,549</u>

*156-Division of Environmental Protection -
Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2012 Org 0313

150	APPROPRIATIONS		[Ch. 11
1	Personal Services.....	001	\$ 321,688
2	Annual Increment.....	004	5,760
3	Employee Benefits.....	010	141,366
4	Unclassified.....	099	<u>135,412</u>
5	Total.....		\$ 604,226

*157-Division of Environmental Protection -
Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2012 Org 0313

1	Personal Services.....	001	\$ 317,311
2	Annual Increment.....	004	3,060
3	Employee Benefits.....	010	143,725
4	Unclassified.....	099	<u>551,357</u>
5	Total.....		\$ 1,015,453

*158-Division of Environmental Protection -
Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2012 Org 0313

1	Personal Services.....	001	\$ 941,554
2	Annual Increment.....	004	11,700
3	Employee Benefits.....	010	393,825
4	Unclassified.....	099	<u>16,644,648</u>
5	Total.....		\$ 17,991,727

*159-Division of Environmental Protection -
Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2012 Org 0313

1 Unclassified - Total. 096 \$ 675,592

*160-Division of Environmental Protection -
Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2012 Org 0313

1	Personal Services.	001	\$	1,050,599
2	Annual Increment.	004		8,282
3	Employee Benefits.	010		432,385
4	Unclassified.	099		<u>813,334</u>
5	Total.		\$	2,304,600

*161-Division of Environmental Protection -
Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2012 Org 0313

1	Personal Services.	001	\$	3,729,993
2	Annual Increment.	004		64,104
3	Employee Benefits.	010		1,684,541
4	Unclassified.	099		<u>3,077,085</u>
5	Total.		\$	8,555,723

*162-Division of Environmental Protection -
Underground Storage Tank
Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2012 Org 0313

1	Personal Services.	001	\$	271,727
2	Annual Increment.	004		2,700

152	APPROPRIATIONS		[Ch. 11
3	Employee Benefits.....	010	104,392
4	Unclassified.....	099	<u>184,048</u>
5	Total.....		\$ 562,867

*163-Division of Environmental Protection -
Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2012 Org 0313

1	Personal Services.....	001	\$ 436,234
2	Annual Increment.....	004	7,320
3	Employee Benefits.....	010	185,366
4	Unclassified.....	099	<u>464,733</u>
5	Total.....		\$ 1,093,653

*164-Division of Environmental Protection -
Solid Waste Reclamation and
Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2012 Org 0313

1	Personal Services.....	001	\$ 559,832
2	Annual Increment.....	004	7,026
3	Employee Benefits.....	010	209,649
4	Unclassified.....	099	<u>4,000,865</u>
5	Total.....		\$ 4,777,372

*165-Division of Environmental Protection -
Solid Waste Enforcement Fund*

(WV Code Chapter 22)

Fund 3333 FY 2012 Org 0313

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1	Personal Services.....	001	\$	1,930,549
2	Annual Increment.....	004		31,950
3	Employee Benefits.....	010		827,912
4	Unclassified.....	099		<u>1,127,387</u>
5	Total.		\$	3,917,798

*166-Division of Environmental Protection -
Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2012 Org 0313

1	Personal Services.....	001	\$	4,186,317
2	Annual Increment.....	004		49,770
3	Employee Benefits.....	010		1,537,871
4	Unclassified.....	099		<u>2,128,775</u>
5	Total.		\$	7,902,733

*167-Division of Environmental Protection -
Environmental Laboratory
Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2012 Org 0313

1	Personal Services.....	001	\$	162,907
2	Annual Increment.....	004		1,980
3	Employee Benefits.....	010		66,360
4	Unclassified.....	099		<u>142,180</u>
5	Total.		\$	373,427

*168-Division of Environmental Protection -
Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2012 Org 0313

154 APPROPRIATIONS [Ch. 11
 1 Unclassified - Total. 096 \$ 7,244,023

*169-Division of Environmental Protection -
 Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2012 Org 0313

1 Unclassified - Total. 096 \$ 60,000

*170-Division of Environmental Protection -
 Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2012 Org 0313

1	Personal Services.	001	\$	386,509
2	Annual Increment.	004		2,485
3	Employee Benefits.	010		152,725
4	Unclassified.	099		<u>2,244,583</u>
5	Total.		\$	<u>2,786,302</u>

*171-Division of Environmental Protection -
 Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2012 Org 0313

1	Personal Services.	001	\$	782,306
2	Annual Increment.	004		12,258
3	Employee Benefits.	010		333,776
4	Unclassified.	099		<u>459,246</u>
5	Total.		\$	<u>1,587,586</u>

*172-Oil and Gas Conservation Commission -
Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2012 Org 0315

1	Personal Services.....	001	\$	116,766
2	Annual Increment.....	004		2,976
3	Employee Benefits.....	010		37,482
4	Unclassified.....	099		<u>73,206</u>
5	Total.....		\$	230,430

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

*173-Division of Health -
The Vital Statistics Account
(WV Code Chapter 16)*

Fund 5144 FY 2012 Org 0506

1	Personal Services.....	001	\$	607,685
2	Annual Increment.....	004		15,190
3	Employee Benefits.....	010		253,896
4	Unclassified.....	099		<u>673,288</u>
5	Total.....		\$	1,550,059

*174-Division of Health -
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Fund 5156 FY 2012 Org 0506

1	Institutional Facilities		
2	Operations (R).....	335	\$ 38,874,567
3	Medical Services Trust Fund -		
4	Transfer (R).....	512	<u>25,300,000</u>
5	Total.		\$ 64,174,567

6 Any unexpended balance remaining in the appropriation
7 for hospital services revenue account at the close of the fiscal
8 year 2011 is hereby reappropriated for expenditure during the
9 fiscal year 2012.

10 The total amount of this appropriation shall be paid from
11 the hospital services revenue account special fund created by
12 W.Va. Code §16-1-13, and shall be used for operating
13 expenses and for improvements in connection with existing
14 facilities and bond payments.

15 The secretary of the department of health and human
16 resources is authorized to utilize up to ten percent of the
17 funds from the appropriation for Institutional Facilities
18 Operations line to facilitate cost effective and cost saving
19 services at the community level.

20 Necessary funds from the above appropriation may be
21 used for medical facilities operations, either in connection
22 with this account or in connection with the line item
23 designated Institutional Facilities Operations in the
24 consolidated medical service fund (fund 0525, fiscal year
25 2012, organization 0506).

26 From the above appropriation to Institutional Facilities
27 Operations, together with available funds from the
28 consolidated medical services fund (fund 0525, activity 335)
29 on July 1, 2011, the sum of \$160,000 shall be transferred to
30 the department of agriculture - land division - farm operation
31 fund (1412) as advance payment for the purchase of food
32 products; actual payments for such purchases shall not be
33 required until such credits have been completely expended.

*175-Division of Health -
Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 2012 Org 0506

1	Personal Services.....	001	\$	621,296
2	Annual Increment.....	004		13,774
3	Employee Benefits.....	010		272,813
4	Unclassified.....	099		<u>1,298,830</u>
5	Total.....		\$	2,206,713

*176-Division of Health -
The Health Facility Licensing Account*

(WV Code Chapter 16)

Fund 5172 FY 2012 Org 0506

1	Personal Services.....	001	\$	430,808
2	Annual Increment.....	004		8,936
3	Employee Benefits.....	010		163,860
4	Unclassified.....	099		<u>185,626</u>
5	Total.....		\$	789,230

*177-Division of Health -
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2012 Org 0506

1	Personal Services.....	001	\$	62,198
2	Annual Increment.....	004		2,247
3	Employee Benefits.....	010		24,137
4	Unclassified.....	099		<u>2,621,540</u>
5	Total.....		\$	2,710,122

*178-Division of Health -
Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2012 Org 0506

1	Unclassified - Total.	096	\$	40,000
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*179-Division of Health -
West Virginia Birth to Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2012 Org 0506

1	Personal Services.	001	\$	494,117
2	Annual Increment.	004		5,890
3	Employee Benefits.	010		207,538
4	Unclassified.	099		<u>24,192,437</u>
5	Total.			\$24,899,982

*180-Division of Health -
Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2012 Org 0506

1	Unclassified—Total.	096	\$	15,000
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*181-West Virginia Health Care Authority —
Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2012 Org 0507

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APPROPRIATIONS

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1	Personal Services.	001	\$ 2,178,871
2	Annual Increment.	004	31,072
3	Employee Benefits.	010	785,806
4	Hospital Assistance.	025	600,000
5	Unclassified.	099	<u>3,104,945</u>
6	Total.		\$ 6,700,694

7 The above appropriation is to be expended in accordance
8 with and pursuant to the provisions of Article 29B, Chapter
9 16 of the Code and from the special revolving fund
10 designated health care cost review fund.

11 The Health Care Authority is authorized to transfer up to
12 \$1,500,000 from this fund to the West Virginia Health
13 Information Network Account (fund 5380) as authorized per
14 W.Va. Code §16-29G-4.

*182-West Virginia Health Care Authority -
West Virginia Health Information Network Account*

(WV Code Chapter 16)

Fund 5380 FY 2012 Org 0507

1	Unclassified.	099	\$ 2,000,000
2	Technology Infrastructure Network.	351	<u>3,500,000</u>
3	Total.		\$ 5,500,000

*183-West Virginia Health Care Authority -
Revolving Loan Fund*

(WV Code Chapter 16)

Fund 5382 FY 2012 Org 0507

1	Unclassified - Total.	096	\$ 2,000,000
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2 The Health Care Authority is authorized to transfer up to
 3 \$4,000,000 from this fund to the West Virginia Health
 4 Information Account (fund 5380) as authorized by W.Va.
 5 Code §16-29G-4.

*184-Division of Human Services -
 Health Care Provider Tax -
 Medicaid State Share Fund*

(WV Code Chapter 11)

Fund 5090 FY 2012 Org 0511

1	Medical Services.	189	\$ 170,727,592
2	Medical Services Administrative Costs	789	<u>417,240</u>
3	Total.		\$171,144,832

4 From the above appropriation for Medical Services
 5 Administrative Costs (fund 5090, activity 789), \$200,000
 6 shall be transferred to the tax division per W.Va. Code §11-
 7 27-32 and the remainder shall be transferred to a special
 8 revenue account in the treasury for use by the department of
 9 health and human resources for administrative purposes. The
 10 remainder of all moneys deposited in the fund shall be
 11 transferred to the West Virginia medical services fund (fund
 12 5084).

*185-Division of Human Services -
 Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 2012 Org 0511

1	Unclassified - Total (R).	096	\$ 44,287,194
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2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Total (fund 5094, activity 096) at the close

4 of the fiscal year 2011 is hereby reappropriated for
5 expenditure during the fiscal year 2012, except for fund
6 5094, activity 096, fiscal year 2008 which shall expire on
7 June 30, 2011.

*186-Division of Human Services -
Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2012 Org 0511

1	Medical Services.	189	\$ 30,556,594
2	Medical Services Administrative Costs	789	<u>543,553</u>
3	Total.		\$ 31,100,147

4 The above appropriation to Medical Services shall be used
5 to provide state match of Medicaid expenditures as defined
6 and authorized in subsection (c) of W.Va. Code §9-4A-2a.
7 Expenditures from the fund are limited to the following:
8 payment of backlogged billings, funding for services to
9 future federally mandated population groups and payment of
10 the required state match for medicaid disproportionate share
11 payments. The remainder of all moneys deposited in the fund
12 shall be transferred to the division of human services
13 accounts.

*187-Division of Human Services -
James "Tiger" Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2012 Org 0511

1	Unclassified - Total.	096	\$1,609,076
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*188-Family Protection Services Board -
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2012 Org 0511

1 Unclassified - Total. 096 \$ 838,022

*189-Division of Human Services -
West Virginia Works Separate State College Program Fund*

(WV Code Chapter 9)

Fund 5467 FY 2012 Org 0511

1 Unclassified - Total. 096 \$ 1,700,000

*190-Division of Human Services -
West Virginia Works Separate State Two-Parent Program
Fund*

(WV Code Chapter 9)

Fund 5468 FY 2012 Org 0511

1 Unclassified - Total. 096 \$ 4,000,000

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

*191-Department of Military Affairs and Public Safety -
Office of the Secretary -
Law-Enforcement, Safety and
Emergency Worker Funeral
Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2012 Org 0601

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1 Unclassified - Total. 096 \$ 25,000

*192-State Armory Board -
General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2012 Org 0603

1 Unclassified - Total. 096 \$ 600,000

*193-Division of Homeland Security and
Emergency Management -
West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

Fund 6295 FY 2012 Org 0606

1 Unclassified - Total (R). 096 \$ 2,000,000

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Total (fund 6295, activity 096) at the close
4 of fiscal year 2011 is hereby reappropriated for expenditure
5 during the fiscal year 2012.

*194-West Virginia Division of Corrections -
Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2012 Org 0608

1	Personal Services.	001	\$	376,732
2	Annual Increment.	004		7,291
3	Employee Benefits.	010		129,257
4	Unclassified.	099		<u>488,853</u>
5	Total.		\$	1,002,133

*195-West Virginia State Police -
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2012 Org 0612

1	Personal Services.....	001	\$	776,904
2	Annual Increment.....	004		28,740
3	Employee Benefits.....	010		305,524
4	Unclassified.....	099		443,203
5	BRIM Premium.....	913		<u>302,432</u>
6	Total.....		\$	1,856,803

7 The total amount of this appropriation shall be paid from
8 the special revenue fund out of fees collected for inspection
9 stickers as provided by law.

*196-West Virginia State Police -
Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2012 Org 0612

1	Unclassified.....	099	\$	1,327,000
2	BRIM Premium.....	913		<u>154,452</u>
3	Total.....		\$	1,481,452

4 The total amount of this appropriation shall be paid from
5 the special revenue fund out of receipts collected pursuant to
6 sections nine-a and sixteen, article fifteen, chapter eleven of
7 the code and paid into a revolving fund account in the state
8 treasury.

*197-West Virginia State Police -
Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2012 Org 0612

1	Unclassified.	099	\$	444,980
2	BRIM Premium.	913		<u>77,222</u>
3	Total.		\$	522,202

*198-West Virginia State Police -
Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2012 Org 0612

1	Unclassified.	099	\$	312,002
2	BRIM Premium.	913		<u>54,063</u>
3	Total.		\$	366,065

*199-West Virginia State Police -
Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2012 Org 0612

1	Unclassified.	099	\$	254,470
2	BRIM Premium.	913		<u>18,524</u>
3	Total.		\$	272,994

*200-West Virginia State Police -
Bail Bond Enforcer Fund*

(WV Code Chapter 15)

Fund 6532 FY 2012 Org 0612

1	Unclassified - Total.	096	\$	8,300
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*201-Division of Veterans' Affairs -
Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2012 Org 0613

1 Unclassified - Total. 096 \$ 0

202-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2012 Org 0615

1	Personal Services.	001	\$	1,395,228
2	Annual Increment.	004		22,260
3	Employee Benefits.	010		546,823
4	Debt Service.	040		9,000,000
5	Unclassified.	099		<u>501,595</u>
6	Total.		\$	11,465,906

*203-Division of Veterans' Affairs -
WV Veterans' Home -
Special Revenue Operating Fund*

(WV Code Chapter 9A)

Fund 6754 FY 2012 Org 0618

1 Unclassified - Total. 096 \$ 0

*204-Fire Commission -
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2012 Org 0619

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1	Personal Services.....	001	\$ 1,836,892
2	Annual Increment.....	004	35,000
3	Employee Benefits.....	010	720,944
4	Unclassified.....	099	1,157,200
5	BRIM Premium.....	913	<u>50,000</u>
6	Total.....		\$ 3,800,036

7 Any unexpended cash balance remaining in fund 6152 at
8 the close of the fiscal year 2011 is hereby available for
9 expenditure as part of the fiscal year 2012 appropriation.

*205-Division of Justice and Community Services -
WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2012 Org 0620

1	Unclassified - Total.....	096	\$ 2,003,180
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*206-Division of Justice and Community Services -
Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2012 Org 0620

1	Unclassified - Total.....	096	\$ 1,500,380
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DEPARTMENT OF REVENUE

207-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2012 Org 0303

1	Personal Services.....	001	\$ 1,752,274
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168	APPROPRIATIONS	[Ch. 11
1	Annual Increment.....	004 24,000
2	Employee Benefits.....	010 611,067
3	Unclassified.....	099 <u>824,228</u>
4	Total.....	\$ 3,211,569

*208-Office of the Secretary -
State Debt Reduction Fund*

(WV Code Chapter 29)

Fund 7007 FY 2012 Org 0701

- | | | |
|---|--|------------------|
| 1 | Unclassified - Total - Transfer..... | 402 \$20,000,000 |
| 2 | The above appropriation for Unclassified - Total - | |
| 3 | Transfer shall be transferred to the Consolidated Public | |
| 4 | Retirement Board - West Virginia Public Employees | |
| 5 | Retirement System Employers Accumulation Fund (fund | |
| 6 | 2510). | |

*209-Tax Division -
Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2012 Org 0702

1	Personal Services.....	001 \$ 17,244
2	Annual Increment.....	004 370
3	Employee Benefits.....	010 5,845
4	Unclassified.....	099 <u>7,717</u>
5	Total.....	\$ 31,176

*210-Tax Division -
Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2012 Org 0702

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1	Personal Services.....	001	\$ 811,192
2	Annual Increment.....	004	20,000
3	Employee Benefits.....	010	324,821
4	Unclassified.....	099	<u>337,610</u>
5	Total.....		\$ 1,493,623

*211-Tax Division -
Special District Excise Tax Administration Fund*

(WV Code Chapter 11)

Fund 7086 FY 2012 Org 0702

1	Unclassified - Total.....	096	\$ 51,993
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*212-Tax Division -
Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2012 Org 0702

1	Unclassified - Total.....	096	\$ 259,568
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*213-Tax Division -
Reduced Cigarette Ignition Propensity
Standard and Fire Prevention Act Fund*

(WV Code Chapter 47)

Fund 7092 FY 2012 Org 0702

1	Unclassified - Total.....	096	\$ 50,000
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*214-State Budget Office -
Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2012 Org 0703

1 Public Employees Insurance Reserve
 2 Fund — Transfer. 903 \$ 6,800,000

3 The above appropriation for Public Employees Insurance
 4 Reserve Fund — Transfer shall be transferred to the Medical
 5 Services Trust Fund (fund 5185, org 0511) for expenditure.

*215-Insurance Commissioner -
 Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2012 Org 0704

1 Personal Services. 001 \$ 518,696
 2 Annual Increment. 004 6,892
 3 Employee Benefits. 010 183,992
 4 Unclassified. 099 1,470,286
 5 Total. \$ 2,179,866

*216-Insurance Commissioner -
 Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2012 Org 0704

1 Personal Services. 001 \$ 383,295
 2 Annual Increment. 004 6,360
 3 Employee Benefits. 010 153,544
 4 Unclassified. 099 272,242
 5 Total. \$ 815,441

217-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2012 Org 0704

1	Personal Services.....	001	\$ 16,462,396
2	Annual Increment.....	004	399,416
3	Employee Benefits.....	010	7,482,591
4	Unclassified.....	099	<u>13,820,282</u>
5	Total.....		\$ 38,164,685

6 The total amount of this appropriation shall be paid from
 7 a special revenue fund out of collections of fees and charges
 8 as provided by law.

*218-Insurance Commissioner –
 Workers’ Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2012 Org 0704

1	Unclassified - Total.....	096	\$550,000,000
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*219-Insurance Commissioner –
 Workers’ Compensation Uninsured Employers’ Fund*

(WV Code Chapter 23)

Fund 7163 FY 2012 Org 0704

1	Unclassified - Total.....	096	\$27,000,000
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*220-Insurance Commissioner –
 Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2012 Org 0704

1	Unclassified - Total.....	096	\$ 5,000,000
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*221-Insurance Commissioner –
Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2012 Org 0704

1 Unclassified - Total. 096 \$10,000,000

*222-Lottery Commission -
Revenue Center Construction Fund*

(WV Code Chapter 29)

Fund 7209 FY 2012 Org 0705

1 Unclassified - Total. 096 \$18,000,000

223-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2012 Org 0706

1	Personal Services.	001	\$	166,570
2	Annual Increment.	004		5,332
3	Employee Benefits.	010		74,789
4	Unclassified.	099		<u>86,497</u>
5	Total.		\$	333,188

*224-Racing Commission -
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2012 Org 0707

1 Medical Expenses - Total. 245 \$ 57,000

2 The total amount of this appropriation shall be paid from
 3 the special revenue fund out of collections of license fees and
 4 fines as provided by law.

5 No expenditures shall be made from this account except
 6 for hospitalization, medical care and/or funeral expenses for
 7 persons contributing to this fund.

*225-Racing Commission -
 Administration and Promotion Account*

(WV Code Chapter 19)

Fund 7304 FY 2012 Org 0707

1	Personal Services.....	001	\$	125,645
2	Annual Increment.....	004		2,170
3	Employee Benefits.....	010		37,495
4	Unclassified.....	099		<u>424,161</u>
5	Total.....		\$	589,471

*226-Racing Commission -
 General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2012 Org 0707

1	Personal Services.....	001	\$	2,258,053
2	Annual Increment.....	004		25,206
3	Employee Benefits.....	010		599,870
4	Unclassified.....	099		<u>1,311,164</u>
5	Total.....		\$	4,194,293

*227-Racing Commission -
 Administration, Promotion, Education, Capital
 Improvement
 and Greyhound Adoption Programs
 to include Spaying and Neutering Account*

(WV Code Chapter 19)

Fund 7307 FY 2012 Org 0707

1	Unclassified - Total.	096	\$	772,765
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*228-Alcohol Beverage Control Administration -
Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2012 Org 0708

1	Personal Services.	001	\$	113,943
2	Annual Increment.	004		3,780
3	Employee Benefits.	010		50,840
4	Unclassified.	099		206,324
5	Capital Outlay and Maintenance.	755		<u>400,000</u>
6	Total.		\$	<u>774,887</u>

7 To the extent permitted by law, four classified exempt
8 positions shall be provided from Personal Services line item
9 for field auditors.

229-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2012 Org 0708

1	Personal Services.	001	\$	3,734,079
2	Annual Increment.	004		98,092
3	Employee Benefits.	010		1,640,895
4	Unclassified.	099		<u>3,030,048</u>
5	Total.		\$	<u>8,503,114</u>

6 From the above appropriation an amount shall be used for
7 the Tobacco/Alcohol Education Program.

1 The total amount of this appropriation shall be paid from
2 a special revenue fund out of liquor revenues.

3 The above appropriation includes the salary of the
4 commissioner and the salaries, expenses and equipment of
5 administrative offices, warehouses and inspectors.

6 There is hereby appropriated from liquor revenues, in
7 addition to the above appropriation, the necessary amount for
8 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

*230-Division of Motor Vehicles -
Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2012 Org 0802

1 Unclassified - Total. 096 \$ 189,000

*231-Division of Motor Vehicles -
Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2012 Org 0802

1 Unclassified - Total. 096 \$ 6,552,511

*232-Division of Highways -
A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2012 Org 0803

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1 Unclassified - Total. 096 \$ 1,600,000

*233-Public Port Authority -
Special Railroad and Intermodal Enhancement Fund*

(WV Code Chapter 17)

Fund 8254 FY 2012 Org 0806

1 Unclassified - Total. 096 \$ 12,000,000

DEPARTMENT OF VETERANS' ASSISTANCE

234-Veterans' Facilities Support Fund -

(WV Code Chapter 9A)

Fund 6703 FY 2012 Org 0613

1 Unclassified - Total. 096 \$ 6,000,000

*235-Department of Veterans' Assistance -
WV Veterans' Home -
Special Revenue Operating Fund*

(WV Code Chapter 9A)

Fund 6754 FY 2012 Org 0618

1 Unclassified - Total. 096 \$ 750,000

BUREAU OF SENIOR SERVICES

*236-Bureau of Senior Services -
Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2012 Org 0508

1 Unclassified - Total. 096 \$ 9,952,064

HIGHER EDUCATION

*237-Higher Education Policy Commission -
System -
Registration Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2012 Org 0442

1	Debt Service.	040	\$ 4,164,854
2	General Capital Expenditures (R). . .	306	<u>500,000</u>
3	Total.		\$ 4,664,854

4 Any unexpended balance remaining in the appropriation
5 for General Capital Expenditures (fund 4902, activity 306,
6 fiscal year 2011) at the close of fiscal year 2011 is hereby
7 reappropriated for expenditure during the fiscal year 2012.

8 The total amount of this appropriation shall be paid from
9 the special capital improvements fund created in W.Va. Code
10 §18B-10-8. Projects are to be paid on a cash basis and made
11 available on July 1 of each year.

12 The above appropriations, except for debt service, may be
13 transferred to special revenue funds for capital improvement
14 projects at the institutions.

*238-Higher Education Policy Commission -
System -
Tuition Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2012 Org 0442

1	Debt Service.....	040	\$27,502,710
2	General Capital Expenditures.	306	3,000,000
3	Facilities Planning		
4	and Administration (R).	386	<u>421,082</u>
5	Total.		\$30,923,792

6 Any unexpended balance remaining in the appropriation
7 for Facilities Planning and Administration (fund 4903,
8 activity 386) at the close of fiscal year 2011 is hereby
9 reappropriated for expenditure during the fiscal year 2012.

10 The total amount of this appropriation shall be paid from
11 the special capital improvement fund created in W.Va. Code
12 §18B-10-8. Projects are to be paid on a cash basis and made
13 available on July 1.

14 The above appropriations, except for debt service, may be
15 transferred to special revenue funds for capital improvement
16 projects at the institutions.

*239-Higher Education Policy Commission -
Tuition Fee Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2012 Org 0442

1 Any unexpended balance remaining in the appropriation
2 at the close of the fiscal year 2011 is hereby reappropriated
3 for expenditure during the fiscal year 2012.

4 The appropriation shall be paid from available
5 unexpended cash balances and interest earnings accruing to
6 the fund. The appropriation shall be expended at the

7 discretion of the Higher Education Policy Commission and
8 the funds may be allocated to any institution within the
9 system.

10 The total amount of this appropriation shall be paid from
11 the unexpended proceeds of revenue bonds previously issued
12 pursuant to W.Va. Code §18-12B-8, which have since been
13 refunded.

*240-Higher Education Policy Commission -
Community and Technical College
Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2012 Org 0442

1 Any unexpended balance remaining in the appropriation
2 for Capital Improvements - Total (fund 4908, activity 958) at
3 the close of fiscal year 2011 is hereby reappropriated for
4 expenditure during the fiscal year 2012.

5 The total amount of this appropriation shall be paid from
6 the sale of the 2009 Series A Community and Technical
7 College Capital Improvement Revenue Bonds and anticipated
8 interest earnings.

*241-Higher Education Policy Commission -
West Virginia University -
West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2012 Org 0463

1 Unclassified - Total (R). 096 \$15,935,640

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Total (fund 4179, activity 096) at the close
4 of fiscal year 2011 is hereby reappropriated for expenditure
5 during the fiscal year 2012.

*242-Higher Education Policy Commission -
Marshall University -
Marshall University Land Sale Account*

(WV Code Chapter 18B)

Fund 4270 FY 2012 Org 0471

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Total (fund 4270, activity 096) at the close
3 of fiscal year 2011 is hereby reappropriated for expenditure
4 during the fiscal year 2012.

5 The total mount of this appropriation shall be used for the
6 purchase of additional real property or technology, or for
7 capital improvements at the institution.

*243-Higher Education Policy Commission -
West Liberty University -
West Liberty University Land Sales Account*

(WV Code Chapter 18B)

Fund 4566 FY 2012 Org 0488

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Total (fund 4566, activity 096) at the close
3 of fiscal year 2011 is hereby reappropriated for expenditure
4 during the fiscal year 2012.

5 The total mount of this appropriation shall be used for the
6 purchase of additional real property or technology, or for
7 capital improvements at the institution.

*244-WV Council for Community and Technical College
Education -
West Virginia Northern Community and Technical College -
WVNCC Land Sale Account*

(WV Code Chapter 18B)

Fund 4732 FY 2012 Org 0489

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Total (fund 4732, activity 096) at the close
3 of fiscal year 2011 is hereby reappropriated for expenditure
4 during the fiscal year 2012.

5 The total mount of this appropriation shall be used for the
6 purchase of additional real property or technology, or for
7 capital improvements at the institution.

MISCELLANEOUS BOARDS AND COMMISSIONS

245-Board of Barbers and Cosmetologists

(WV Code Chapter 16 and 30)

Fund 5425 FY 2012 Org 0505

1	Personal Services.	001	\$	284,906
2	Annual Increment.	004		6,500
3	Employee Benefits.	010		133,024
4	Unclassified.	099		<u>221,612</u>
5	Total.		\$	646,042

6 The total amount of this appropriation shall be paid from
7 a special revenue fund out of collections made by the board
8 of barbers and cosmetologists as provided by law.

246-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2012 Org 0509

1	Personal Services.....	001	\$	49,410
2	Annual Increment.....	004		1,300
3	Employee Benefits.....	010		21,488
4	Unclassified.....	099		<u>27,673</u>
5	Total.		\$	99,871

6 The total amount of this appropriation shall be paid from
 7 the special revenue fund out of fees and collections as
 8 provided by Article 29A, Chapter 16 of the Code.

247-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2012 Org 0906

1	Unclassified - Total.	096	\$	387,957
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248-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2012 Org 0907

1	Unclassified - Total.	096	\$	1,126,049
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249-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2012 Org 0926

1	Personal Services.	001	\$ 8,500,587
2	Annual Increment.	004	161,734
3	Employee Benefits.	010	3,100,051
4	Unclassified.	099	2,957,041
5	PSC Weight Enforcement.	345	4,385,540
6	Debt Payment/Capital Outlay.	520	350,000
7	BRIM Premium.	913	<u>114,609</u>
8	Total.		\$ 19,569,562

9 The total amount of this appropriation shall be paid from
10 a special revenue fund out of collection for special license
11 fees from public service corporations as provided by law.

12 The Public Service Commission is authorized to spend up
13 to \$500,000, from surplus funds in this account, to meet the
14 expected deficiencies in the Motor Carrier Division (fund
15 8625, org 0926) due to the amendment and reenactment of
16 W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715,
17 Regular Session, 1997.

*250-Public Service Commission -
Gas Pipeline Division —
Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2012 Org 0926

1	Personal Services.	001	\$ 166,481
2	Annual Increment.	004	6,890
3	Employee Benefits.	010	68,569
4	Unclassified.	099	<u>85,966</u>
5	Total.		\$ 327,906

1 The total amount of this appropriation shall be paid from
2 a special revenue fund out of receipts collected for or by the
3 public service commission pursuant to and in the exercise of

4 regulatory authority over pipeline companies as provided by
5 law.

*251-Public Service Commission -
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2012 Org 0926

1	Personal Services.	001	\$	1,575,837
2	Annual Increment.	004		49,647
3	Employee Benefits.	010		609,253
4	Unclassified.	099		<u>679,790</u>
5	Total.		\$	2,914,527

6 The total amount of this appropriation shall be paid from
7 a special revenue fund out of receipts collected for or by the
8 public service commission pursuant to and in the exercise of
9 regulatory authority over motor carriers as provided by law.

*252-Public Service Commission -
Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2012 Org 0926

1	Personal Services.	001	\$	542,658
2	Annual Increment.	004		8,692
3	Employee Benefits.	010		186,692
4	Unclassified.	099		286,472
5	BRIM Premium.	913		<u>4,532</u>
6	Total.		\$	1,029,046

7 The total amount of this appropriation shall be paid from
8 a special revenue fund out of collections made by the public
9 service commission.

253-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2012 Org 0927

1	Personal Services.....	001	\$	423,477
2	Annual Increment.....	004		8,828
3	Employee Benefits.....	010		148,020
4	Unclassified.....	099		<u>300,622</u>
5	Total.....		\$	880,947

6 The total amount of this appropriation shall be paid out of
7 collections of license fees as provided by law.

*254-WV Board of Examiners for Speech-Language
Pathology and Audiology*

(WV Code Chapter 30)

Fund 8646 FY 2012 Org 0930

1	Unclassified - Total.....	096	\$	114,813
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255-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2012 Org 0935

1	Unclassified - Total.....	096	\$	130,970
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256-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2012 Org 0936

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1 Unclassified - Total. 096 \$ 20,500

257-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2012 Org 0938

1 Unclassified - Total. 096 \$ 127,006

258-Board of Medicine

(WV Code Chapter 30)

Fund 9070 FY 2012 Org 0945

1 Unclassified - Total. 096 \$ 1,488,162

259-West Virginia Enterprise Resource Planning Board

(WV Code Chapter 12)

Fund __ FY 2012 Org __

1 Unclassified - Total. 096 \$43,000,000

260-Board of Treasury Investments

(WV Code Chapter 12)

Fund 9152 FY 2012 Org 0950

1 Unclassified - Total. 096 \$ 1,266,707

2 There is hereby appropriated from this fund, in addition to
3 the above appropriation, the amount of funds necessary for
4 the Board of Treasury Investments to pay the fees and

5 expenses of custodians, fund advisors and fund managers for
6 the Consolidated fund of the State as provided in Article 6C,
7 Chapter 12 of the Code.

8 The total amount of the appropriation shall be paid from
9 the special revenue fund out of fees and collections as
10 provided by law.

11 Total TITLE II, Section 3 - Other Funds
12 (Including claims against the state) \$1,478,494,773

1 **Sec. 4. Appropriations from lottery net profits.** - Net
2 profits of the lottery are to be deposited by the director of the
3 lottery to the following accounts in the amounts indicated.
4 The director of the lottery shall prorate each deposit of net
5 profits in the proportion the appropriation for each account
6 bears to the total of the appropriations for all accounts.

7 After first satisfying the requirements for Fund 2252, Fund
8 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the
9 director of the lottery shall make available from the
10 remaining net profits of the lottery any amounts needed to
11 pay debt service for which an appropriation is made for Fund
12 9065, Fund 4297, and Fund 3514 and is authorized to transfer
13 any such amounts to Fund 9065, Fund 4297, and Fund 3514
14 for that purpose. Upon receipt of reimbursement of amounts
15 so transferred, the director of the lottery shall deposit the
16 reimbursement amounts to the following accounts as required
17 by this section.

*261-Education, Arts, Sciences and Tourism -
Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2012 Org 0211

	Activity	Lottery Funds
1	Debt Service - Total.	310 \$10,000,000

*262-West Virginia Development Office -
Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2012 Org 0304

1	Tourism - Telemarketing Center.	463 \$ 82,080
2	WV Film Office.	498 337,951
3	Tourism - Advertising (R).	618 2,938,284
4	Tourism - Unclassified (R).	662 <u>4,000,719</u>
5	Total.	\$ 7,359,034

6 Any unexpended balances remaining in the appropriations
7 for Capitol Complex - Capital Outlay (fund 3067, activity
8 417), Tourism - Advertising (fund 3067, activity 618),
9 Tourism - Unclassified (fund 3067, activity 662), and
10 Tourism - Special Projects (fund 3067, activity 859) at the
11 close of the fiscal year 2011 are hereby reappropriated for
12 expenditure during the fiscal year 2012.

263-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2012 Org 0310

1	Unclassified (R).	099 \$ 2,302,899
2	Pricketts Fort State Park.	324 120,000
3	Non-Game Wildlife (R).	527 416,503
4	State Parks and	
5	Recreation Advertising (R).	619 <u>548,733</u>
6	Total.	\$ 3,388,135

1 Any unexpended balances remaining in the appropriations
 2 for Gypsy Moth Suppression Program for State Parks (fund
 3 3267, activity 017), Unclassified (fund 3267, activity 099),
 4 Capital Outlay - Parks (fund 3267, activity 288), Non-Game
 5 Wildlife (fund 3267, activity 527), and State Parks and
 6 Recreation Advertising (fund 3267, activity 619) at the close
 7 of the fiscal year 2011 are hereby reappropriated for
 8 expenditure during the fiscal year 2012.

264-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2012 Org 0402

1	Unclassified (R).	099	\$ 3,950,000
2	FBI Checks.	372	116,806
3	Vocational Education		
4	Equipment Replacement.	393	1,000,000
5	Assessment Program (R).	396	3,427,848
6	21st Century Technology Infrastructure		
7	Network Tools and Support (R).	933	<u>22,078,295</u>
8	Total.		\$ <u>30,572,949</u>

9 Any unexpended balances remaining in the appropriations
 10 for Unclassified (fund 3951, activity 099), Assessment
 11 Program (fund 3951, activity 396), and 21st Century
 12 Technology Infrastructure Network Tools and Support (fund
 13 3951, activity 933) at the close of the fiscal year 2011 are
 14 hereby reappropriated for expenditure during the fiscal year
 15 2012.

*265-State Department of Education -
 School Building Authority -
 Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2012 Org 0402

1 Debt Service - Total. 310 \$ 18,000,000

*266-Department of Education and the Arts -
Office of the Secretary -
Control Account -
Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2012 Org 0431

1	Unclassified (R).	099	\$	120,000
2	Commission for National and			
3	Community Service.	193		435,050
4	Arts Programs (R).	500		81,075
5	College Readiness (R).	579		184,489
6	Challenger Learning Center.	862		118,750
7	Statewide STEM 21 st Century Academy	897		150,000
8	Governor's Honor Academy.	478		*400,000
9	Literacy Project.	899		* <u>350,000</u>
10	Total.		\$	2,003,722

11 Any unexpended balances remaining in the appropriations
12 for Unclassified (fund 3508, activity 099), Arts Programs
13 (fund 3508, activity 500), and College Readiness (fund 3508,
14 activity 579) at the close of fiscal year 2011 are hereby
15 reappropriated for expenditure during the fiscal year 2012.

*267-Division of Culture and History -
Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2012 Org 0432

***CLERK'S NOTE:** The Chief Executive reduced Item 266, line 8, by \$89,358, from \$489,358 to \$400,000 and on line 9, by \$75,000 from \$425,000 to \$350,000. The total does NOT reflect the reduction by the Governor.

1	Huntington Symphony.....	027	\$	94,763
2	Martin Luther King, Jr.			
3	Holiday Celebration.	031		10,260
4	Unclassified (R).....	099		755,540
5	Fairs and Festivals (R).....	122		2,071,731
6	Archeological Curation/Capital			
7	Improvements (R).....	246		51,626
8	Historic Preservation Grants (R). . . .	311		559,029
9	West Virginia Public Theater.....	312		198,550
10	Tri-County Fair Association.	343		22,562
11	George Tyler Moore Center for the			
12	Study of the Civil War.....	397		56,858
13	Greenbrier Valley Theater.	423		148,913
14	Theater Arts of West Virginia.	464		265,000
15	Marshall Artists Series.....	518		59,565
16	Grants for Competitive Arts			
17	Program (R).....	624	*	1,021,250
18	West Virginia State Fair.....	657		49,875
19	Contemporary American Theater			
20	Festival.	811		94,763
21	Independence Hall.	812		45,125
22	Mountain State Forest Festival.....	864		63,175
23	WV Symphony.....	907		94,763
24	Wheeling Symphony.	908		94,763
25	Appalachian Children's Chorus.....	916		90,250
26	Save The Music			<u>25,000</u>
27	Total.		\$	6,102,111

28 Any unexpended balances remaining in the appropriations
 29 for Archeological Curation/Capital Improvements (fund
 30 3534, activity 246), Historic Preservation Grants (fund 3534,
 31 activity 311), Grants for Competitive Arts Program (fund
 32 3534, activity 624), and Project ACCESS (fund 3534,
 33 activity 865) at the close of the fiscal year 2011 are hereby
 34 reappropriated for expenditure during the fiscal year 2012.

*CLERK'S NOTE: The Chief Executive reduced Item 267, line 17, by \$228,750, from \$1,250,000 from \$200,000 to \$1,021,250. The total does NOT reflect the reduction by the Governor.

35 From the above appropriation for Unclassified (fund 3534,
36 activity 099) funding shall be provided to the Aracoma Story
37 (Logan) \$47,500, Barbour County Arts and Humanities
38 Council \$1,425, Beckley Main Street (Raleigh) \$4,750, Belle
39 Boyd House (Berkeley) \$1,900, Buffalo Creek Memorial
40 (Logan) \$4,750, Carnegie Hall (Greenbrier) \$69,825, Ceredo
41 Historical Society (Wayne) \$1,900, Ceredo Kenova Railroad
42 Museum (Wayne) \$1,900, Chuck Mathena Center (Mercer)
43 \$100,000, Collis P. Huntington Railroad Historical Society
44 (Cabell) \$9,500, Country Music Hall of Fame and Museum
45 (Marion) \$6,650, Culture and History National Conference
46 \$25,000, Flannigan Murrell House (Summers) \$9,500, Fort
47 Ashby Fort (Mineral) \$1,425, Fort New Salem (Harrison)
48 \$3,515, Fort Randolph (Mason) \$4,750, Frieda J. Riley
49 Award (Harrison) \$2,850, General Adam Stephen Memorial
50 Foundation \$17,600, Grafton Mother's Day Shrine
51 Committee (Taylor) \$8,075, Hardy County Tour and Crafts
52 Association \$19,000, Heritage Craft Center of the Eastern
53 Panhandle (Berkeley) \$6,650, Heritage Farm Museum &
54 Village (Cabell) \$47,500, Historic Fayette Theater (Fayette)
55 \$5,225, Historic Middleway Conservancy (Jefferson) \$950,
56 Jefferson County Black History Preservation Society
57 (Jefferson) \$4,750, Jefferson County Historical Landmark
58 Commission \$7,600, Maddie Carroll House (Cabell) \$7,125,
59 Marshall County Historical Society \$8,075, McCoy Theater
60 (Hardy) \$19,000, Morgantown Theater Company
61 (Monongalia) \$19,000, Mountaineer Boys' State (Lewis)
62 \$9,500, Nicholas Old Main Foundation (Nicholas) \$1,900,
63 Norman Dillon Farm Museum (Berkeley) \$9,500, Old Opera
64 House Theater Company (Jefferson) \$14,250, Parkersburg
65 Arts Center (Wood) \$19,000, Pocahontas Historic Opera
66 House \$5,700, Raleigh County All Wars Museum \$9,500,
67 Rhododendron Girl's State (Ohio) \$9,500, Roane County 4-H
68 and FFA Youth Livestock Program \$4,750, Scottish Heritage
69 Society/N. Central WV (Harrison) \$4,750, Society for the
70 Preservation of McGrew House (Preston) \$3,325, Soldiers'
71 Memorial Theater (Raleigh) \$9,500, Southern WV Veterans'
72 Museum \$4,275, Summers County Historic Landmark

73 Commission \$4,750, Those Who Served War Museum
74 (Mercer) \$3,800, Three Rivers Avian Center (Summers)
75 \$14,250, Tug Valley Arts Council (Mingo) \$4,750, Tug
76 Valley Chamber of Commerce Coal House (Mingo) \$1,900,
77 Tunnelton Historical Society (Preston) \$1,900, Veterans
78 Committee for Civic Improvement of Huntington (Wayne)
79 \$4,750, Webb Chapel Cemetery Association Event (Preston)
80 \$1,900, West Virginia Museum of Glass (Lewis) \$4,750,
81 West Virginia Music Hall of Fame (Kanawha) \$33,250,
82 YMCA Camp Horseshoe (Ohio) \$95,000, Youth Museum of
83 Southern WV (Raleigh) \$11,400.

84 From the above appropriation for Fairs and Festivals (fund
85 3534, activity 122) funding shall be provided to the African-
86 American Cultural Heritage Festival (Jefferson) \$4,750,
87 African-American Heritage Family Tree Museum (Fayette)
88 \$4,275, Alderson 4th of July Celebration (Greenbrier)
89 \$4,750, Allegheny Echo (Pocahontas) \$7,125, Alpine
90 Festival/Leaf Peepers Festival (Tucker) \$10,688, Angus Beef
91 and Cattle Show (Lewis) \$1,425, Antique Market Fair
92 (Lewis) \$1,900, Apollo Theater-Summer Program (Berkeley)
93 \$1,900, Appalachian Autumn Festival (Braxton) \$3,325,
94 Appalachian Mountain Bike Race (Calhoun) \$1,425, Apple
95 Butter Festival (Morgan) \$5,700, Arkansaw Homemaker's
96 Heritage Weekend (Hardy) \$3,325, Armed Forces Day-South
97 Charleston (Kanawha) \$2,850, Arthurdale Heritage New
98 Deal Festival (Preston) \$4,750, Arts Monongahela
99 (Monongalia) \$19,000, Athens Town Fair (Mercer) \$1,900,
100 Augusta Fair (Randolph) \$4,750, Barbour County Fair
101 \$23,750, Barboursville Octoberfest (Cabell) \$4,750, Bass
102 Festival (Pleasants) \$1,758, Battelle District Fair
103 (Monongalia) \$4,750, Battle of Dry Creek (Greenbrier)
104 \$1,425, Battle of Lewisburg Civil War Days (Greenbrier)
105 \$2,850, Battle of Point Pleasant Memorial Committee
106 (Mason) \$4,750, Belle Town Fair (Kanawha) \$4,275,
107 Belleville Homecoming (Wood) \$19,000, Bergoo Down
108 Home Days (Webster) \$2,375, Berkeley County Youth Fair
109 \$17,575, Black Bear 4K Mountain Bike Race (Kanawha)

110 \$950, Black Heritage Festival (Harrison) \$5,700, Black
111 Walnut Festival (Roane) \$9,500, Blue-Gray Reunion
112 (Barbour) \$3,325, Boone County Fair \$9,500, Boone County
113 Labor Day Celebration \$3,800, Bradshaw Fall Festival
114 (McDowell) \$1,900, Bramwell Street Fair (Mercer) \$3,325,
115 Braxton County Fairs and Festivals Association \$10,925,
116 Braxton County Monster Fest/WV Autumn Festival \$2,375,
117 Brooke County Fair \$3,325, Bruceton Mills Good Neighbor
118 Days (Preston) \$1,900, Buckwheat Festival (Preston) \$8,075,
119 Buffalo 4th of July Celebration (Putnam) \$475, Burlington
120 Apple Harvest Festival (Mineral) \$28,500, Burlington
121 Pumpkin Harvest Festival (Raleigh) \$4,750, Cabell County
122 Fair \$9,500, Calhoun County Wood Festival \$1,900,
123 Campbell's Creek Community Fair (Kanawha) \$2,375, Cape
124 Coalwood Festival Association (McDowell) \$2,375, Capon
125 Bridge Annual VFD Celebration (Hampshire) \$950, Capon
126 Bridge Founders Day Festival (Hampshire) \$1,900, Capon
127 Springs Ruritan 4th of July (Hampshire) \$950, Cass
128 Homecoming (Pocahontas) \$1,900, Cedarville Town Festival
129 (Gilmer) \$950, Celebration in the Park (Wood) \$3,800,
130 Celebration of America (Monongalia) \$5,700, Chapmanville
131 Apple Butter Festival (Logan) \$950, Chapmanville Fire
132 Department 4th of July (Logan) \$2,850, Charles Town
133 Christmas Festival (Jefferson) \$4,750, Charles Town
134 Heritage Festival (Jefferson) \$4,750, Charlie West Blues
135 Festival (Kanawha) \$9,500, Cherry River Festival (Nicholas)
136 \$6,175, Chester Fireworks (Hancock) \$1,425, Chester Fourth
137 of July Festivities (Hancock) \$4,750, Chief Logan State Park-
138 Civil War Celebration (Logan) \$7,600, Christmas in
139 Shepherdstown (Jefferson) \$3,800, Christmas in the Park
140 (Brooke) \$4,750, Christmas in the Park (Logan) \$23,750,
141 City of Dunbar Critter Dinner (Kanawha) \$9,500, City of
142 New Martinsville Festival of Memories (Wetzel) \$10,450,
143 City of Pleasant Valley Celebration (Marion) \$2,375, Civil
144 War Horse Cavalry Race (Barbour) \$950, Clay County
145 Golden Delicious Apple Festival \$6,650, Coal Field
146 Jamboree (Logan) \$33,250, Coalton Days Fair (Randolph)
147 \$6,650, Country Roads Festival (Fayette) \$1,900, Cowen

148 Railroad Festival (Webster) \$3,325, Craigsville Fall Festival
149 (Nicholas) \$3,325, Delbarton Homecoming (Mingo) \$3,325,
150 Doddridge County Fair \$6,650, Durbin Days (Pocahontas)
151 \$4,750, Elbert/Filbert Reunion Festival (McDowell) \$1,425,
152 Elizabethtown Festival (Marshall) \$4,750, Elkins Randolph
153 County 4th of July Car Show (Randolph) \$1,900, Fairview
154 4th of July Celebration (Marion) \$950, Farm Safety Day
155 (Preston) \$1,900, Fayette American Legion 4th of July
156 (Fayette) \$950, FestivALL Charleston (Kanawha) \$19,000,
157 First Stage Children's Theater Company (Cabell) \$1,900,
158 Flemington Day Fair and Festival (Taylor) \$3,325,
159 Follansbee Community Days (Brooke) \$7,838, Fort Gay
160 Mountain Heritage Days (Wayne) \$4,750, Fort Henry Days
161 (Ohio) \$5,035, Frankford Autumnfest (Greenbrier) \$4,750,
162 Franklin Fishing Derby (Pendleton) \$7,125, Franklins
163 Fireman Carnival (Pendleton) \$4,750, Freshwater Folk
164 Festival (Greenbrier) \$4,750, Friends Auxiliary of W.R.
165 Sharpe Hospital (Lewis) \$4,750, Frontier Days (Harrison)
166 \$2,850, Frontier Fest/Canaan Valley (Taylor) \$4,750, Fund
167 for the Arts-Wine & All that Jazz Festival (Kanawha) \$2,375,
168 Gassaway Days Celebration (Braxton) \$4,750, Gilbert
169 Kiwanis Harvest Festival (Mingo) \$3,800, Gilbert Spring
170 Fling (Mingo) \$4,750, Gilmer County Farm Show \$3,800,
171 Grant County Arts Council \$1,900, Grape Stomping Wine
172 Festival (Nicholas) \$1,900, Great Greenbrier River Race
173 (Pocahontas) \$9,500, Green Spring Days (Hampshire) \$950,
174 Guyandotte Civil War Days (Cabell) \$9,500, Hamlin 4th of
175 July Celebration (Lincoln) \$4,750, Hampshire Civil War
176 Celebration Days (Hampshire) \$950, Hampshire County 4th
177 of July Celebration \$19,000, Hampshire County Fair \$5,700,
178 Hampshire Heritage Days (Hampshire) \$3,800, Hancock
179 County Oldtime Fair \$4,750, Hardy County Commission-4th
180 of July \$9,500, Hatfield McCoy Matewan Reunion Festival
181 (Mingo) \$4,750, Hatfield McCoy Trail National ATV and
182 Dirt Bike Weekend (Wyoming) \$4,750, Heritage Craft
183 Festival (Monroe) \$950, Heritage Days Festival (Roane)
184 \$1,425, Hicks Festival (Tucker) \$1,900, Hilltop Festival
185 (Cabell) \$950, Hilltop Festival of Lights (McDowell) \$1,900,

186 Hinton Railroad Days (Summers) \$5,225, Holly River
187 Festival (Webster) \$1,425, Hundred 4th of July (Wetzel)
188 \$6,888, Hundred American Legion Earl Kiger Post Bluegrass
189 Festival (Wetzel) \$1,900, Hurricane 4th of July Celebration
190 (Putnam) \$4,750, Iaeger Lions Club Annual Golf Show
191 (McDowell) \$1,425, Iaeger Town Fair (McDowell) \$1,425,
192 Irish Heritage Festival of WV (Raleigh) \$4,750, Irish Spring
193 Festival (Lewis) \$950, Italian Heritage Festival-Clarksburg
194 (Harrison) \$28,500, Jackson County Fair \$4,750,
195 Jacksonburg Homecoming (Wetzel) \$950, Jane Lew Arts and
196 Crafts Fair (Lewis) \$950, Jefferson County African American
197 Heritage Festival \$4,750, Jefferson County Fair Association
198 \$23,750, Jersey Mountain Ruritan Pioneer Days (Hampshire)
199 \$950, John Henry Days Festival (Monroe) \$4,750, Johnnie
200 Johnson Blues and Jazz Festival (Marion) \$4,750, Johnstown
201 Community Fair (Harrison) \$2,375, Junior Heifer Preview
202 Show (Lewis) \$1,900, Kanawha Coal Riverfest-St. Albans
203 4th of July Festival (Kanawha) \$4,750, Kanawha County Fair
204 \$4,750, Kayford Reunion (Kanawha) \$2,375, Kermit Fall
205 Festival (Mingo) \$2,850, Keyser Old Fashioned 4th of July
206 Celebration (Mineral) \$950, King Coal Festival (Mingo)
207 \$4,750, Kingwood Downtown Street Fair and Heritage Days
208 (Preston) \$1,900, L.Z. Rainelle WV Veterans Reunion
209 (Greenbrier) \$4,750, Lady of Agriculture (Preston) \$950,
210 Lamb and Steer Show (Grant) \$8,550, Larry Joe Harless
211 Center Octoberfest Hatfield McCoy Trail (Mingo) \$9,500,
212 Larry Joe Harless Community Center Spring Middle School
213 Event (Mingo) \$4,750, Last Blast of Summer (McDowell)
214 \$4,750, Laurel Mt. Re-enactment Committee (Barbour)
215 \$3,088, Lewis County Fair Association \$3,325, Lewisburg
216 Shanghai (Greenbrier) \$1,900, Lincoln County Fall Festival
217 \$7,600, Lincoln County Winterfest \$4,750, Lincoln District
218 Fair (Marion) \$2,375, Little Birch Days Celebration
219 (Braxton) \$475, Little Levels Heritage Festival (Pocahontas)
220 \$1,900, Logan County Arts and Crafts Fair \$3,800, Logan
221 Freedom Festival \$14,250, Lost Creek Community Festival
222 (Harrison) \$6,650, Mannington District Fair (Marion) \$5,700,
223 Maple Syrup Festival (Randolph) \$950, Marion County FFA

224 Farm Fest \$2,375, Marmet Annual Labor Day Celebration
225 (Kanawha) \$1,900, Marshall County Antique Power Show
226 \$2,375, Marshall County Fair \$7,125, Mason County Fair
227 \$4,750, Mason Dixon Festival (Monongalia) \$6,650,
228 Matewan Massacre Reenactment (Mingo) \$5,700, Matewan-
229 Magnolia Fair (Mingo) \$42,750, McARTS-McDowell
230 County \$19,000, McDowell County Fair \$2,375, McGrew
231 House History Day (Preston) \$1,900, McNeill's Rangers
232 (Mineral) \$7,600, Meadow Bridge Hometown Festival
233 (Fayette) \$1,188, Meadow River Days Festival (Greenbrier)
234 \$2,850, Mercer Bluestone Valley Fair (Mercer) \$1,900,
235 Mercer County Fair \$1,900, Mid Ohio Valley Antique
236 Engine Festival (Wood) \$2,850, Milton Christmas in the Park
237 (Cabell) \$2,375, Milton Fourth of July Celebration (Cabell)
238 \$2,375, Mineral County Fair \$1,663, Mineral County
239 Veterans Day Parade \$1,425, Molasses Festival (Calhoun)
240 \$1,900, Monroe County Harvest Festival \$1,900, Moon Over
241 Mountwood Fishing Festival (Wood) \$2,850, Morgan County
242 Fair-History Wagon \$1,425, Moundsville Bass Festival
243 (Marshall) \$3,800, Moundsville July 4th Celebration
244 (Marshall) \$4,750, Mount Liberty Fall Festival (Barbour)
245 \$2,375, Mountain Fest (Monongalia) \$19,000, Mountain
246 Festival (Mercer) \$4,394, Mountain Heritage Arts and Crafts
247 Festival (Jefferson) \$4,750, Mountain Music Festival
248 (McDowell) \$2,375, Mountain State Apple Harvest Festival
249 (Berkeley) \$7,125, Mountain State Arts Crafts Fair at Cedar
250 Lakes (Jackson) \$42,750, Mountaineer Hot Air Balloon
251 Festival (Monongalia) \$3,800, Mud River Festival (Lincoln)
252 \$7,600, Mullens Dogwood Festival (Wyoming) \$6,650,
253 Multi-Cultural Festival of West Virginia (Kanawha) \$19,000,
254 Nettle Festival (Pocahontas) \$4,750, New Cumberland
255 Christmas Parade (Hancock) \$2,850, New Cumberland
256 Fourth of July Fireworks (Hancock) \$4,750, New River
257 Bridge Day Festival (Fayette) \$38,000, Newburg Volunteer
258 Fireman's Field Day (Preston) \$950, Newell Annual Clay
259 Festival (Hancock) \$2,850, Nicholas County Fair \$4,750,
260 Nicholas County Potato Festival \$3,325, North Preston
261 Farmers Club - Civil War Times (Preston) \$950, North River

262 Valley Festival (Hampshire) \$950, Northern Preston Mule
263 Pull and Farmers Days (Preston) \$3,800, Oak Leaf Festival
264 (Fayette) \$5,700, Oceana Heritage Festival (Wyoming)
265 \$5,700, Oglebay City Park-Festival of Lights (Ohio) \$76,000,
266 Oglebay Festival (Ohio) \$9,500, Ohio County Country Fair
267 \$8,550, Ohio Valley Beef Association (Wood) \$2,375, Ohio
268 Valley Black Heritage Festival (Ohio) \$5,225, Old Central
269 City Fair (Cabell) \$4,750, Old Tyme Christmas (Jefferson)
270 \$2,280, Paden City Labor Day Festival (Wetzel) \$6,175,
271 Parkersburg Homecoming (Wood) \$11,400, Patty Fest
272 (Monongalia) \$1,900, Paw Paw District Fair (Marion)
273 \$3,325, Pax Reunion Committee (Fayette) \$4,750, Pendleton
274 County 4-H Weekend \$1,900, Pendleton County Committee
275 for Arts \$14,250, Pendleton County Fair \$23,750, Pennsboro
276 Country Road Festival (Ritchie) \$1,900, Petersburg Fourth of
277 July Celebration (Grant) \$19,000, Petersburg HS Celebration
278 (Grant) \$9,500, Piedmont-Annual Back Street Festival
279 (Mineral) \$3,800, Pinch Reunion (Kanawha) \$1,425, Pine
280 Bluff Fall Festival (Harrison) \$3,800, Pine Grove 4th of July
281 Festival (Wetzel) \$6,650, Pineville Festival (Wyoming)
282 \$5,700, Pleasants County Agriculture Youth Fair \$4,750,
283 Poca Heritage Days (Putnam) \$2,850, Pocahontas County
284 Pioneer Days \$6,650, Point Pleasant Stern Wheel Regatta
285 (Mason) \$4,750, Potomac Highlands Maple Festival (Grant)
286 \$5,700, Pratt Fall Festival (Kanawha) \$2,375, Princeton
287 Street Fair (Mercer) \$4,750, Putnam County Fair \$4,750,
288 Quartets on Parade (Hardy) \$3,800, Rand Community Center
289 Festival (Kanawha) \$2,375, Randolph County Community
290 Arts Council \$2,850, Randolph County Fair \$6,650,
291 Randolph County Ramp and Rails \$1,900, Ranson Christmas
292 Festival (Jefferson) \$4,750, Ranson Festival (Jefferson)
293 \$4,750, Ravenswood Octoberfest (Jackson) \$7,600,
294 Reedsville VFD Fair (Preston) \$1,900, Renick Liberty
295 Festival (Greenbrier) \$950, Riders of the Flood (Greenbrier)
296 \$2,850, Ripley 4th of July (Jackson) \$14,250, Ritchie County
297 Fair and Exposition \$4,750, Ritchie County Pioneer Days
298 \$950, River City Festival (Preston) \$950, Riverfest (Marion)
299 \$1,900, Roane County Agriculture Field Day \$2,850,

300 Romney 250th Celebration \$6,000, Ronceverte River Festival
301 (Greenbrier) \$4,750, Rowlesburg Labor Day Festival
302 (Preston) \$950, Rupert Country Fling (Greenbrier) \$2,850,
303 Saint Spyridon Greek Festival (Harrison) \$2,375, Salem
304 Apple Butter Festival (Harrison) \$3,800, Sistersville 4th of
305 July Fireworks (Wetzel) \$5,225, Smoke on the Water
306 (Kanawha) \$1,900, Smoke on the Water (Wetzel) \$2,850,
307 South Charleston Summerfest (Kanawha) \$9,500, Southern
308 Wayne County Fall Festival \$950, Spirit of Grafton
309 Celebration (Taylor) \$9,500, Spring Mountain Festival
310 (Grant) \$3,800, Springfield Peach Festival (Hampshire)
311 \$1,140, St. Albans City of Lights - December (Kanawha)
312 \$4,750, Stoco Reunion (Raleigh) \$2,375, Stonewall Jackson
313 Heritage Arts & Crafts Jubilee (Lewis) \$10,450, Storytelling
314 Festival (Lewis) \$475, Strawberry Festival (Upshur) \$28,500,
315 Tacy Fair (Barbour) \$950, Taste of Parkersburg (Wood)
316 \$4,750, Taylor County Fair \$5,225, Terra Alta VFD 4th of
317 July Celebration (Preston) \$950, The Gathering at Sweet
318 Creek (Wood) \$2,850, Three Rivers Coal Festival (Marion)
319 \$7,363, Thunder on the Tygart - Mothers' Day Celebration
320 (Taylor) \$14,250, Town of Anawalt Celebration (McDowell)
321 \$1,425, Town of Delbarton 4th of July Celebration (Mingo)
322 \$2,850, Town of Fayetteville Heritage Festival (Fayette)
323 \$7,125, Town of Kimball Centennial Celebration
324 (McDowell) \$4,750, Town of Matoaka Hog Roast (Mercer)
325 \$950, Treasure Mountain Festival (Pendleton) \$23,750, Tri-
326 County Fair (Grant) \$14,250, Tucker County Arts Festival
327 and Celebration \$17,100, Tucker County Fair \$4,513, Tucker
328 County Health Fair \$1,900, Tunnelton Depot Days (Preston)
329 \$950, Tunnelton Volunteer Fire Department Festival
330 (Preston) \$950, Turkey Festival (Hardy) \$2,850, Tyler
331 County Fair \$4,940, Tyler County Fourth of July \$475,
332 Uniquely West Virginia Festival (Morgan) \$1,900, Upper
333 Kanawha Valley Oktoberfest (Kanawha) \$2,375, Upper Ohio
334 Valley Italian Festival (Ohio) \$11,400, Upper West Fork
335 VFD Bluegrass Festival (Calhoun) \$475, Upshur County Fair
336 \$6,650, Valley District Fair- Reedsville (Preston) \$3,325,
337 Veterans Welcome Home Celebration (Cabell) \$1,500,

338 Vietnam Veterans of America Christmas Party (Cabell) \$950,
339 Volcano Days at Mountwood Park (Wood) \$4,750, War
340 Homecoming Fall Festival (McDowell) \$1,425, Wardensville
341 Fall Festival (Hardy) \$4,750, Wayne County Fair \$4,750,
342 Wayne County Fall Festival \$4,750, Webster County Wood
343 Chopping Festival \$14,250, Webster Wild Water Weekend
344 \$1,900, Weirton July 4th Celebration (Hancock) \$19,000,
345 Welcome Home Family Day (Wayne) \$3,040, Wellsburg 4th
346 of July Celebration (Brooke) \$7,125, Wellsburg Apple
347 Festival of Brooke County \$4,750, West Virginia Blackberry
348 Festival (Harrison) \$4,750, West Virginia Chestnut Festival
349 (Preston) \$950, West Virginia Coal Festival (Boone) \$9,500,
350 West Virginia Dairy Cattle Show (Lewis) \$9,500, West
351 Virginia Dandelion Festival (Greenbrier) \$4,750, West
352 Virginia Fair and Exposition (Wood) \$7,695, West Virginia
353 Fireman's Rodeo (Fayette) \$2,375, West Virginia Honey
354 Festival (Wood) \$1,900, West Virginia Oil and Gas Festival
355 (Tyler) \$10,450, West Virginia Polled Hereford Association
356 (Braxton) \$1,425, West Virginia Poultry Festival (Hardy)
357 \$4,750, West Virginia Pumpkin Festival (Cabell) \$9,500,
358 West Virginia State Folk Festival (Gilmer) \$4,750, West
359 Virginia State Monarch Butterfly Festival (Brooke) \$4,750,
360 West Virginia Water Festival - City of Hinton (Summers)
361 \$15,200, West Virginia Wine & Jazz Festival (Monongalia)
362 \$8,550, Weston VFD 4th of July Firemen Festival (Lewis)
363 \$1,900, Wetzel County Autumnfest \$5,225, Wetzel County
364 Town and Country Days \$16,150, Wheeling Celtic Festival
365 (Ohio) \$1,900, Wheeling City of Lights (Ohio) \$7,600,
366 Wheeling Sternwheel Regatta (Ohio) \$9,500, Wheeling
367 Vintage Raceboat Regatta (Ohio) \$19,000, Whipple
368 Community Action (Fayette) \$2,375, Widen Days Festival
369 (Calhoun) \$1,900, Wileyville Homecoming (Wetzel) \$3,800,
370 Wine Festival and Mountain Music Event (Harrison) \$4,750,
371 Winter Festival of the Waters (Berkeley) \$4,750, Wirt
372 County Fair \$2,375, Wirt County Pioneer Days \$1,900,
373 Youth Stockman Beef Expo. (Lewis) \$1,900, Sternwheel
374 Festival (Wood) \$2,850.

375 Any unexpended balance remaining in the appropriation
 376 for Unclassified (fund 3534, activity 099), at the close of the
 377 fiscal year 2011 is hereby reappropriated for expenditure
 378 during the fiscal year 2012.

379 Any unexpended balance remaining in the appropriation
 380 for Fairs and Festivals (fund 3534, activity 122), at the close
 381 of the fiscal year 2011 is hereby reappropriated for
 382 expenditure during the fiscal year 2012.

383 Any Fairs & Festivals awards shall be funded in addition
 384 to, and not in lieu of, individual grant allocations derived
 385 from the Arts Council and the Cultural Grant Program
 386 allocations.

*268-Library Commission -
 Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2012 Org 0433

1	Books and Films.....	179	\$	427,500
2	Services to Libraries.....	180		550,000
3	Grants to Public Libraries.	182		8,348,884
4	Digital Resources.....	309		219,992
5	Libraries - Special Projects (R).	625		850,000
6	Infomine Network.	884		<u>871,594</u>
7	Total.		\$	11,267,970

8 Any unexpended balance remaining in the appropriation
 9 for Libraries-Special Projects (fund 3559, activity 625) at the
 10 close of fiscal year 2011 is hereby reappropriated for
 11 expenditure during the fiscal year 2012.

*269-Bureau of Senior Services -
 Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2012 Org 0508

1	Personal Services.	001	\$	138,628
2	Annual Increment.	004		3,000
3	West Virginia Helpline.	006		200,000
4	Employee Benefits.	010		65,486
5	Unclassified.	099		1,333,543
6	Local Programs Service Delivery			
7	Costs.	200		2,475,250
8	Silver Haired Legislature.	202		20,000
9	Area Agencies Administration	203		38,684
10	Senior Citizen Centers and			
11	Programs (R)	462		2,470,000
12	Transfer to Division of Human Services			
13	for Health Care and Title XIX Waiver			
14	for Senior Citizens.	539		31,822,578
15	Roger Tompkins Alzheimers Respite			
16	Care.	643		1,796,038
17	Regional Aged and Disabled			
18	Resource Center.	767		935,000
19	Senior Services Medicaid Transfer.	871		8,670,000
20	Legislative Initiatives for the Elderly.	904		10,000,000
21	Long Term Care Ombudsman.	905		321,325
22	BRIM Premium.	913		7,243
23	In-Home Services and Nutrition			
24	for Senior Citizens.	917		<u>4,500,000</u>
25	Total.		\$	64,796,775

26 Any unexpended balance remaining in the appropriation
 27 for Senior Citizen Centers and Programs (fund 5405, activity
 28 462), at the close of the fiscal year 2011 is hereby
 29 reappropriated for expenditure during the fiscal year 2012.

30 The above appropriation for Transfer to Division of
 31 Human Services for Health Care and Title XIX Waiver for
 32 Senior Citizens along with the federal moneys generated

33 thereby shall be used for reimbursement for services
 34 provided under the program. From the above appropriation
 35 for Unclassified (fund 5405, activity 099) \$500,000 is for the
 36 Lighthouse Program and \$500,000 is for the FAIR Program.

*270-Community and Technical College —
 Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2012 Org 0442

1 Debt Service - Total..... 310 \$ 5,000,000

2

3 Any unexpended balance remaining in the appropriation
 4 for Capital Outlay and Improvements - Total (fund 4908,
 5 activity 847) at the close of fiscal year 2011 is hereby
 6 reappropriated for expenditure during the fiscal year 2012.

*271-Higher Education Policy Commission -
 Lottery Education -
 Higher Education Policy Commission -
 Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2012 Org 0441

1 Marshall Medical School -
 2 RHI Program and Site Support (R).. 033 \$ 470,104
 3 WVU Health Sciences -
 4 RHI Program and Site Support (R).. 035 1,289,226
 5 RHI Program and Site Support -
 6 District Consortia (R). 036 2,213,469
 7 RHI Program and Site Support -
 8 RHEP Program
 9 Administration (R). 037 169,731

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10	RHI Program and Site Support -	
11	Grad Med Ed and Fiscal	
12	Oversight (R)..... 038	98,709
13	Higher Education Grant Program (R). 164	362,323
14	Minority Doctoral Fellowship (R). . . 166	150,000
15	Underwood—Smith Scholarship	
16	Program - Student Awards (R). . . 167	141,142
17	Health Sciences Scholarship (R). . . 176	251,459
18	Vice Chancellor for Health Sciences —	
19	Rural Health Residency	
20	Program (R)..... 601	267,532
21	MA Public Health Program and	
22	Health Science Technology (R)... 623	62,291
23	Marshall University Graduate	
24	College Writing Project (R).. . . . 807	25,000
25	WV Engineering, Science, and	
26	Technology Scholarship	
27	Program (R)..... 868	470,473
28	Health Sciences Career	
29	Opportunities Program (R). 869	376,992
30	HSTA Program (R). 870	1,539,068
31	Center for Excellence in	
32	Disabilities (R). 967	<u>320,000</u>
33	Total.	\$ 8,207,519

34 Any unexpended balances remaining in the appropriations
35 at the close of fiscal year 2011 are hereby reappropriated for
36 expenditure during the fiscal year 2012.

37 The above appropriation for Underwood-Smith
38 Scholarship Program - Student Awards (activity 167) shall be
39 transferred to the Underwood-Smith Teacher Scholarship
40 Fund (fund 4922, org 0441) established by W.Va. Code
41 §18C-4-1.

42 The above appropriation for WV Engineering, Science,
43 and Technology Scholarship Program (activity 868) shall be

44 transferred to the West Virginia Engineering, Science and
45 Technology Scholarship Fund (fund 4928, org 0441)
46 established by W.Va. Code §18C-6-1.

47 The above appropriation for Higher Education Grant
48 Program (activity 164) shall be transferred to the Higher
49 Education Grant Fund (fund 4933, Org 0441) established by
50 W.Va. Code §18C-5-3.

51 Total TITLE II, Section 4 -
52 Lottery Revenue. \$166,698,215

1 **Sec. 5. Appropriations from state excess lottery**
2 **revenue fund.** - In accordance with W.Va. Code §29-22-18a,
3 the following appropriations shall be deposited and disbursed
4 by the director of the lottery to the following accounts in this
5 section in the amounts indicated.

6 After first funding the appropriations required by W.Va.
7 Code §29-22-18a, the director of the lottery shall provide
8 funding from the state excess lottery revenue fund for the
9 remaining appropriations in this section to the extent that
10 funds are available. In the event that revenues to the state
11 excess lottery revenue fund are not sufficient to meet all the
12 appropriations made pursuant to this section, then the director
13 of the lottery shall first provide the necessary funds to meet
14 the appropriation for Fund 7208, activity 482 of this section;
15 next, to provide the funds necessary for Fund 3517, activity
16 775 of this section; next, to provide the funds necessary for
17 Fund 7208, activity 095 of this section. Allocation of the
18 funds for each appropriation shall be allocated in succession
19 before any funds are provided for the next subsequent
20 appropriation.

*272-Lottery Commission -
Refundable Credit*

Fund 7207 FY 2012 Org 0705

	Activity	Lottery Funds
1	Unclassified - Total - Transfer. 402	\$ 10,000,000

2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the General
4 Revenue Fund to provide reimbursement for the refundable
5 credit allowable under W.Va. Code §11-21-21. The amount
6 of the required transfer shall be determined solely by the state
7 tax commissioner and shall be completed by the director of
8 the lottery upon the commissioner’s request.

*273-Lottery Commission -
General Purpose Account*

Fund 7206 FY 2012 Org 0705

1	Unclassified - Total - Transfer. 402	\$ 65,000,000
2	The above appropriation for Unclassified - Total -	
3	Transfer (activity 402) shall be transferred to the General	
4	Revenue Fund as determined by the director of the lottery.	

274-Education Improvement Fund

Fund 4295 FY 2012 Org 0441

1	Unclassified - Total - Transfer. 402	\$ 29,000,000
2	The above appropriation for Unclassified - Total -	
3	Transfer (activity 402) shall be transferred to the PROMISE	
4	Scholarship Fund (fund 4296, org 0441) established by	
5	W.Va. Code §18C-7-7.	

6 The Legislature has explicitly set a finite amount of
7 available appropriations and directed the administrators of
8 the Program to provide for the award of scholarships within
9 the limits of available appropriations.

*275-Economic Development Authority -
Economic Development Project Fund*

Fund 9065 FY 2012 Org 0944

1 Debt Service - Total. 310 \$ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f),
3 excess lottery revenues are authorized to be transferred to the
4 lottery fund as reimbursement of amounts transferred to the
5 economic development project fund pursuant to section four
6 of this title and W.Va. Code §29-22-18, subsection (f).

276-School Building Authority

Fund 3514 FY 2012 Org 0402

1 Unclassified - Total. 096 \$ 19,000,000

277-West Virginia Infrastructure Council

Fund 3390 FY 2012 Org 0316

1 Unclassified - Total - Transfer. 402 \$ 46,000,000

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***CLERK’S NOTE:** The Chief Executive deleted all language in Item 277, lines 2 through 5, which read “The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the West Virginia Infrastructure Fund (fund 3384, org 0316) created by W.Va. Code §31-15A-9.”

278-Higher Education Improvement Fund

Fund 4297 FY 2012 Org 0441

1 Unclassified - Total. 096 \$ 15,000,000

279-State Park Improvement Fund

Fund 3277 FY 2012 Org 0310

1 Unclassified - Total (R). 096 \$ 5,000,000

2 Any unexpended balance remaining in the appropriation
3 at the close of the fiscal year 2011 is hereby reappropriated
4 for expenditure during the fiscal year 2012.

5 Appropriations to the State Park Improvement Fund are
6 not to be expended on personal services or employee
7 benefits.

280-Racing Commission -

Fund 7308 FY 2012 Org 0707

1 Special Breeders Compensation
2 (WVC §29-22-18a,
3 subsection (1)) 218 \$ 2,000,000

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***CLERK’S NOTE:** The Chief Executive deleted all language in Item 280, lines 4 through 7, which read “The above appropriation for Unclassified - Transfer (fund 7308, activity 482) shall be transferred to the Unredeemed Pari-Mutuel Tickets Fund (fund 7301, org 0707) in support of W.Va., Code §19-23-13.

*281-Lottery Commission -
Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2012 Org 0705

1	Teachers' Retirement Savings			
2	Realized.....	095	\$	34,216,000
3	Unclassified - Transfer.....	482		<u>62,900,000</u>
4	Total.		\$	<u>97,116,000</u>

5 The above appropriation for Unclassified - Transfer (fund
6 7208, activity 482) shall be transferred to the General
7 Revenue Fund.

8 The above appropriation for Teachers' Retirement Savings
9 Realized (fund 7208, activity 095) shall be transferred to the
10 Employee Pension and Health Care Benefit Fund (fund
11 2044).

282—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2012 Org 2300

1 Any unexpended balance remaining in the appropriation
2 for Tax Reduction and Federal Funding Increased
3 Compliance (TRAFFIC) - Lottery Surplus (fund 1736,
4 activity 929) at the close of the fiscal year 2011 is hereby
5 reappropriated for expenditure during the fiscal year 2012.

283—Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2012 Org 0100

1 Any unexpended balance remaining in the appropriation
 2 for Publication of Papers and Transition Expenses — Lottery
 3 Surplus (fund 1046, activity 066) at the close of the fiscal
 4 year 2011 is hereby reappropriated for expenditure during the
 5 fiscal year 2012.

284-Division of Finance

(WV Code Chapter 5A)

Fund 2208 FY 2012 Org 0209

1 Any unexpended balance remaining in the appropriation
 2 Enterprise Resource Planning System Planning Project (fund
 3 2208, activity 087) at the close of the fiscal year 2011 is
 4 hereby reappropriated for expenditure during the fiscal year
 5 2012.

6 The above appropriation for Enterprise Resource Planning
 7 System Planning Project, activity 087, shall be expended
 8 upon consultation with the executive and legislative
 9 branches.

285—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2012 Org 0307

1	Unclassified - Total.	096	\$ 1,000,000
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2

3 Any unexpended balances remaining in the appropriations
 4 for Recreational Grants or Economic Development Loans
 5 (fund 3170, activity 253), and Connectivity Research and
 6 Development - Lottery Surplus (fund 3170, activity 923) at
 7 the close of the fiscal year 2011 are hereby reappropriated for
 8 expenditure during the fiscal year 2012.

9 The above appropriation to Connectivity Research and
 10 Development - Lottery Surplus shall be used by the West
 11 Virginia Development Office for the coordinated
 12 development of technical infrastructure in areas where
 13 expanded resources and technical infrastructure may be
 14 expected or required pursuant to the provisions of W.Va.
 15 Code §5A-6-4.

286-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3517 FY 2012 Org 0402

1 Retirement Systems-Unfunded
 2 Liability..... 775 \$ 47,139,292

3 The above appropriation for Retirement Systems -
 4 Unfunded Liability (fund 3517, activity 775) shall be
 5 transferred to the Consolidated Public Retirement Board -
 6 West Virginia Teachers' Retirement System Employers
 7 Accumulation Fund (fund 2601).

*287—Higher Education Policy Commission -
 Administration -
 Control Account*

(WV Code Chapter 18B)

Fund 4932 FY 2012 Org 0441

1 Any unexpended balance remaining in the appropriation
 2 for Advanced Technology Centers (fund 4932, activity 028)
 3 at the close of the fiscal year 2011 is hereby reappropriated
 4 for expenditure during the fiscal year 2012.

*288-Division of Health —
Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2012 Org 0506

- 1 Any unexpended balance remaining in the appropriation
- 2 for Capital Outlay and Maintenance (fund 5219, activity 755)
- 3 at the close of the fiscal year 2011 is hereby reappropriated
- 4 for expenditure during the fiscal year 2012.

*289—Department of Military Affairs and
Public Safety -
Office of the Secretary*

(WV Code Chapter 5F)

Fund 6005 FY 2012 Org 0601

- 1 Any unexpended balance remaining in the appropriation
- 2 for Interoperable Communications System (fund 6005,
- 3 activity 303) at the close of the fiscal year 2011 is hereby
- 4 reappropriated for expenditure during the fiscal year 2012.

*290—Division of Corrections -
Correctional Units*

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

Fund 6283 FY 2012 Org 0608

- 1 Any unexpended balances remaining in the appropriations
- 2 for Capital Outlay, Repairs and Equipment (fund 6283, activity
- 3 589), and Capital Outlay and Maintenance (fund 6283, activity
- 4 755) at the close of the fiscal year 2011 are hereby
- 5 reappropriated for expenditure during the fiscal year 2012.

1 Total TITLE II, Section 5 -
 2 Excess Lottery Funds \$355,255,292

1 **Sec. 6. Appropriations of federal funds.** - In accordance
 2 with Article 11, Chapter 4 of the Code from federal funds
 3 there are hereby appropriated conditionally upon the
 4 fulfillment of the provisions set forth in Article 2, Chapter
 5 11B of the Code the following amounts, as itemized, for
 6 expenditure during the fiscal year 2012.

LEGISLATIVE

291-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2012 Org 2300

	Activity	Federal Funds
1	Unclassified - Total.	096 \$ 3,000,000

JUDICIAL

292-Supreme Court

Fund 8867 FY 2012 Org 2400

1	Unclassified - Total.	096 \$ 5,500,000
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EXECUTIVE

*293-Governor's Office -
American Recovery and Reinvestment Act*

(WV Code Chapter 5)

Fund 8701 FY 2012 Org 0100

1 Federal Economic Stimulus. 891 \$ 50,000,000

2 The above appropriation for Federal Economic Stimulus
3 shall be used in accordance with regulations and guidelines
4 provided by the U.S. Department of Education which include
5 restoring funding levels in the public education funding
6 formula and higher education institutions.

*294-Governor's Office -
ARRA NTIA Broadband Infrastructure Grant Fund*

(WV Code Chapter 5)

Fund 8717 FY 2012 Org 0100

1 Federal Economic Stimulus. 891 \$105,000,000

295-Governor's Office

(WV Code Chapter 5)

Fund 8742 FY 2012 Org 0100

1 Unclassified - Total. 096 \$ 27,500,000

*296-Governor's Office -
Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2012 Org 0100

1 Unclassified - Total. 096 \$ 7,276,899
2 Federal Economic Stimulus. 891 15,006,906
3 Total. \$ 22,283,805

*297-Governor's Office -
Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2012 Org 0100

1 Unclassified - Total. 096 \$ 5,666,464

298-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 5,047,205

2 Federal Economic Stimulus. 891 716,000

3 Total. \$ 5,763,205

*299-Department of Agriculture -
Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 871,804

*300-Department of Agriculture -
State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 1,814,314

*301-Department of Agriculture -
Land Protection Authority*

Fund 8896 FY 2012 Org 1400

1 Unclassified - Total. 096 \$ 500,450

*302-Secretary of State -
State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2012 Org 1600

1 Unclassified - Total. 096 \$ 1,652,451

DEPARTMENT OF ADMINISTRATION

303-West Virginia Prosecuting Attorney's Institute

(WV Code Chapter 7)

Fund 8834 FY 2012 Org 0228

1 Unclassified - Total. 096 \$ 81,343

304—Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2012 Org 0230

1 Unclassified - Total. 096 \$ 37,956,726

DEPARTMENT OF COMMERCE

305-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2012 Org 0305

1 Unclassified - Total. 096 \$ 10,195,448

306-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2012 Org 0306

1	Unclassified - Total.	096	\$	380,000
2	Federal Economic Stimulus.	891		<u>1,162,000</u>
3	Total.		\$	<u>1,542,000</u>

307-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2012 Org 0307

1 Unclassified - Total. 096 \$ 9,698,272

308-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2012 Org 0308

1 Unclassified - Total. 096 \$ 557,242

309-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2012 Org 0310

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1 Unclassified - Total. 096 \$ 11,953,241

*310-Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2012 Org 0314

1 Unclassified - Total. 096 \$ 613,177

311-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2012 Org 0323

1	Unclassified.	099	\$	512,657
2	Reed Act 2002—			
3	Unemployment Compensation. . .	622		2,850,000
4	Reed Act 2002-Employment Services	630		<u>1,650,000</u>
5	Total.		\$	5,012,657

6 Pursuant to the requirements of 42 U.S.C. 1103, Section
7 903 of the Social Security Act, as amended, and the
8 provisions of W.Va. Code §21A-9-9, the above appropriation
9 to Unclassified shall be used by WorkForce West Virginia
10 for the specific purpose of administration of the state's
11 unemployment insurance program or job service activities,
12 subject to each and every restriction, limitation or obligation
13 imposed on the use of the funds by those federal and state
14 statutes.

312-Division of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2012 Org 0328

1	Unclassified - Total.	096	\$	1,509,432
2	Federal Economic Stimulus.	891		<u>27,000,000</u>
3	Total.		\$	28,509,432

DEPARTMENT OF EDUCATION

313-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2012 Org 0402

1	Unclassified - Total.	096	\$	219,004,000
2	Federal Economic Stimulus.	891		<u>30,000,000</u>
3	Total.		\$	249,004,000

*314-State Department of Education -
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2012 Org 0402

1	Unclassified - Total.	096	\$	115,000,000
2	Federal Economic Stimulus.	891		<u>50,000</u>
3	Total.		\$	115,050,000

*315-State Board of Education -
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2012 Org 0402

1	Unclassified - Total.	096	\$	16,235,000
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*316-State Department of Education -
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2012 Org 0402

1	Unclassified - Total.	096	\$ 106,800,000
2	Federal Economic Stimulus.	891	<u>32,000,000</u>
3	Total.		\$ 138,800,000

*317-West Virginia Schools for the Deaf
and the Blind*

(WV Code Chapters 18 and 18A)

Fund 8716 FY 2012 Org 0403

1	Unclassified - Total.	096	\$ 50,000
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DEPARTMENT OF EDUCATION AND THE ARTS

*318-Department of Education and the Arts -
Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2012 Org 0431

1	Unclassified - Total.	096	\$ 975,000
2	Federal Economic Stimulus.	891	<u>400,000</u>
3	Total.		\$ 1,375,000

319-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2012 Org 0432

1	Unclassified - Total.	096	\$	2,244,778
2	Federal Economic Stimulus.	891		<u>300,000</u>
3	Total.		\$	2,544,778

320-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2012 Org 0433

1	Unclassified - Total.	096	\$	1,953,217
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321-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2012 Org 0439

1	Unclassified - Total.	096	\$	1,500,000
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*322-State Board of Rehabilitation -
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2012 Org 0932

1	Unclassified - Total.	096	\$	67,361,140
2	Federal Economic Stimulus.	891		<u>4,808,444</u>
3	Total.		\$	72,169,584

*323-State Board of Rehabilitation -
Division of Rehabilitation Services -
Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2012 Org 0932

1 Unclassified - Total. 096 \$ 25,198,290

DEPARTMENT OF ENVIRONMENTAL PROTECTION

324-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2012 Org 0313

1	Unclassified - Total.	096	\$ 176,523,652
2	Federal Economic Stimulus.	891	<u>1,775,000</u>
3	Total.		\$ 178,298,652

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

325-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2012 Org 0506

1 Unclassified - Total. 096 \$ 7,330,746

*326-Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2012 Org 0506

1 Unclassified - Total. 096 \$ 86,744,605

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2	Federal Economic Stimulus.	891 <u>4,258,233</u>
3	Total.	\$ 91,002,838

*327-Division of Health -
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2012 Org 0506

1	Unclassified - Total.	096	\$ 16,000,000
2	Federal Economic Stimulus.	891	<u>2,000,000</u>
3	Total.		\$ 18,000,000

328-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2012 Org 0507

1	Unclassified - Total.	096	\$ 1,935,239
2	Federal Economic Stimulus.	891	<u>3,000,000</u>
3	Total.		\$ 4,935,239

329-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2012 Org 0510

1	Unclassified - Total.	096	\$ 443,117
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330-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2012 Org 0511

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1	Unclassified.	099	\$158,446,387
2	Medical Services.	189	2,050,000,000
3	Medical Services Administrative		
4	Costs.	789	76,136,928
5	Federal Economic Stimulus.	891	<u>1,000,000</u>
6	Total.		\$ 2,285,583,315

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

331-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2012 Org 0601

1	Unclassified - Total.	096	\$ 25,005,326
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332-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 8726 FY 2012 Org 0603

1	Unclassified - Total.	096	\$ 96,929,599
2	Federal Economic Stimulus.	891	<u>1,800,000</u>
3	Total.		\$ 98,729,599

*333-Division of Homeland Security and
Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2012 Org 0606

1	Unclassified - Total.	096	\$21,255,931
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334-Division of Corrections

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

Fund 8836 FY 2012 Org 0608

1 Unclassified - Total. 096 \$ 110,000

335-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2012 Org 0612

1	Unclassified - Total.	096	\$	11,698,407
2	Federal Economic Stimulus.	891		<u>290,484</u>
3	Total.		\$	11,988,891

336-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2012 Org 0613

1 Unclassified - Total. 096 \$ 0

*337-Division of Veterans' Affairs -
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2012 Org 0618

1 Unclassified - Total. 096 \$ 0

338-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2012 Org 0619

1 Unclassified - Total. 096 \$ 80,000

339-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2012 Org 0620

1	Unclassified - Total.	096	\$	10,907,775
2	Federal Economic Stimulus.	891		<u>1,135,055</u>
3	Total.		\$	12,042,830

DEPARTMENT OF REVENUE

*340-Tax Division -
Consolidated Federal Fund*

(WV Code Chapter 11)

Fund 8899 FY 2012 Org 0702

1 Unclassified - Total. 096 \$ 10,000

341-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2012 Org 0704

1 Unclassified - Total. 096 \$ 14,200,000

DEPARTMENT OF TRANSPORTATION

342-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2012 Org 0802

1 Unclassified - Total. 096 \$ 18,173,534

343 - State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2012 Org 0804

1 Unclassified - Total. 096 \$ 750,000

344-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2012 Org 0805

1 Unclassified - Total. 096 \$ 16,782,368

2 Federal Economic Stimulus. 891 3,500,000

3 Total. \$ 20,282,368

345-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2012 Org 0806

1 Unclassified - Total. 096 \$ 3,533,000

DEPARTMENT OF VETERANS' ASSISTANCE

346-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2012 Org 0613

1 Unclassified - Total. 096 \$ 11,204,310

*347-Department of Veterans' Assistance -
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2012 Org 0618

1 Unclassified - Total. 096 \$ 1,784,007

BUREAU OF SENIOR SERVICES

348-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2012 Org 0508

1 Unclassified - Total. 096 \$ 14,533,834

MISCELLANEOUS BOARDS AND COMMISSIONS

*349-Public Service Commission -
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2012 Org 0926

1	Unclassified - Total.	096	\$	1,690,131
2	Federal Economic Stimulus.	891		<u>799,998</u>
3	Total.		\$	2,490,129

*350-Public Service Commission -
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2012 Org 0926

1	Unclassified - Total.	096	\$	295,263
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351-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2012 Org 0941

1	Unclassified - Total.	096	\$	600,000
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352-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2012 Org 0942

1	Unclassified - Total.	096	\$	<u>50,000</u>
2	Total TITLE II, Section 6 -			
3	Federal Funds.		\$	<u><u>3,802,264,829</u></u>

- 1 **Sec. 7. Appropriations from federal block grants. -**
2 The following items are hereby appropriated from federal
3 block grants to be available for expenditure during the fiscal
4 year 2012.

*353-Governor's Office -
Office of Economic Opportunity
Community Services*

Fund 8799 FY 2012 Org 0100

1	Unclassified - Total.	096	\$	9,637,059
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*354-West Virginia Development Office -
Community Development*

Fund 8746 FY 2012 Org 0307

1	Unclassified - Total.	096	\$	48,356,725
2	Federal Economic Stimulus.	891		<u>5,000,000</u>
3	Total.		\$	53,356,725

*355-WorkForce West Virginia -
Workforce Investment Act*

Fund 8749 FY 2012 Org 0323

1	Unclassified - Total.	096	\$	25,052,340
2	Federal Economic Stimulus.	891		<u>12,558,313</u>
3	Total.		\$	37,610,653

*356-Division of Energy -
Energy Efficiency and Conservation*

Fund 8702 FY 2012 Org 0328

1	Federal Economic Stimulus.	891	\$	10,000,000
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*357-Division of Health -
Maternal and Child Health*

Fund 8750 FY 2012 Org 0506

1 Unclassified - Total. 096 \$ 11,001,731

*358-Division of Health -
Preventive Health*

Fund 8753 FY 2012 Org 0506

1 Unclassified - Total. 096 \$ 2,245,785

*359-Division of Health -
Substance Abuse Prevention and Treatment*

Fund 8793 FY 2012 Org 0506

1 Unclassified - Total. 096 \$ 11,592,430

*360-Division of Health -
Community Mental Health Services*

Fund 8794 FY 2012 Org 0506

1 Unclassified - Total. 096 \$ 3,353,397

*361-Division of Health -
Abstinence Education Program*

Fund 8825 FY 2012 Org 0506

1 Unclassified - Total. 096 \$ 500,000

*362-Division of Human Services -
Energy Assistance*

Fund 8755 FY 2012 Org 0511

1 Unclassified - Total. 096 \$ 40,000,000

*363-Division of Human Services -
Social Services*

Fund 8757 FY 2012 Org 0511

1 Unclassified - Total. 096 \$ 17,198,240

*364-Division of Human Services -
Temporary Assistance for Needy Families*

Fund 8816 FY 2012 Org 0511

1 Unclassified - Total. 096 \$ 130,419,061

*365-Division of Human Services -
Child Care and Development*

Fund 8817 FY 2012 Org 0511

1	Unclassified - Total.	096	\$	40,038,906
2	Federal Economic Stimulus.	891		<u>250,000</u>
3	Total.		\$	40,288,906

*366-Division of Justice and Community Services -
Juvenile Accountability Incentive*

Fund 8829 FY 2012 Org 0620

1	Unclassified - Total.	096	\$	<u>500,256</u>
2	Total TITLE II, Section 7 -			
3	Federal Block Grants.			<u>\$367,704,243</u>

1 **Sec. 8. Awards for claims against the state.** – There are
2 hereby appropriated for fiscal year 2012, from the fund as
3 designated, in the amounts as specified, general revenue
4 funds in the amount of \$5,957,174, special revenue funds in
5 the amount of \$71,197, and state road funds in the amount of
6 \$2,390,821 for payment of claims against the state.

1 **Sec. 9. Appropriations from surplus accrued.** – The
 2 following items are hereby appropriated from the state fund,
 3 general revenue, and are to be available for expenditure
 4 during the fiscal year 2012 out of surplus funds only, accrued
 5 from the fiscal year ending the thirtieth day of June, two
 6 thousand eleven, subject to the terms and conditions set forth
 7 in this section.

8 It is the intent and mandate of the Legislature that the
 9 following appropriations be payable only from surplus
 10 accrued as of the thirty-first day of July, two thousand eleven
 11 from the fiscal year ending the thirtieth day of June, two
 12 thousand eleven.

13 In the event that surplus revenues available on the thirty-
 14 first day of July, two thousand eleven, are not sufficient to
 15 meet all the appropriations made pursuant to this section,
 16 then the appropriations shall be made to the extent that
 17 surplus funds are available as of the date mandated and shall
 18 be allocated first to provide the necessary funds to meet the
 19 first appropriation of this section and each subsequent
 20 appropriation in the order listed in this section.

367-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2012 Org 0313

1 Unclassified - Surplus. 097 \$ 3,000,000

2 The above appropriation for Unclassified - Surplus - Total
 3 (fund 0273, activity 097) shall be transferred to the
 4 Underground Storage Tank Insurance Fund (fund 3218, org
 5 0313).

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369-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2012 Org 0209

Enterprise Resource Planning

System - Surplus. 872 \$ 15,000,000

*370-Division of Corrections -
Correctional Units*

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

Fund 0450 FY 2012 Org 0608

***CLERK’S NOTE:** The Chief Executive deleted Item 368 in its entirety, which read:

*“368-Division of Homeland Security and
Emergency Management
(WV Code Chapter 15)*

Fund 0443 FY 2012 Org 0606

Unclassified - Surplus. 097 \$ 5,000,000

The above appropriation for Unclassified-Surplus (fund 0443, activity 097) shall be used to match federal funds for the purpose of relocating the Division of Homeland Security and Emergency Management.”

1	Capital Outlay, Repairs and			
2	Equipment - Surplus.	677	\$	3,000,000
3	Capital Improvements - Surplus.	661		<u>3,000,000</u>
4	Total.		\$	6,000,000

371-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2012 Org 1400

1	Soil Conservation Projects - Surplus.	269	\$	5,400,000
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*372-Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2012 Org 0506

1	Unclassified - Surplus.	097	\$	1,262,990
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*373-Higher Education Policy Commission -
Administration -
Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2012 Org 0441

1	Capital Improvements - Surplus.	661	\$	5,000,000
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*374-Adjutant General -
State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2012 Org 0603

1 Armory Capital Improvements -
 2 Surplus..... 325 \$ 7,000,000

375-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2012 Org 0305

1 Equipment - Surplus..... 341 \$ 819,000

376-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2012 Org 0432

1 Capital Outlay, Repairs
 2 and Equipment - Surplus..... 677 \$ 750,000

377-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2012 Org 0701

1 Unclassified - Transfer..... 482 \$ 600,000

2 The above appropriation for Unclassified - Transfer (fund
 3 0465, activity 482) shall be transferred to the Unredeemed
 4 Pari-Mutuel Tickets Fund (fund 7301, org 0707) in support
 5 of W.Va. Code §19-23-13.

378-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2012 Org 1400

1	Agricultural Disaster and		
2	Mitigation Needs - Surplus.	850 \$	*250,000
3	Total TITLE II, Section 9-		
4	Surplus Accrued		<u>\$50,331,990</u>

1 **Sec. 10. Special revenue appropriations.** - There are
2 hereby appropriated for expenditure during the fiscal year
3 2012 appropriations made by general law from special
4 revenues which are not paid into the state fund as general
5 revenue under the provisions of W.Va. Code §12-2-2:
6 *Provided*, That none of the money so appropriated by this
7 section shall be available for expenditure except in
8 compliance with and in conformity to the provisions of
9 articles two and three, chapter twelve and article two, chapter
10 eleven-b of the code, unless the spending unit has filed with
11 the director of the budget and the legislative auditor prior to
12 the beginning of each fiscal year:

13 (a) An estimate of the amount and sources of all revenues
14 accruing to such fund;

15 (b) A detailed expenditure schedule showing for what
16 purposes the fund is to be expended.

17 In addition to the preceding provisions, from the
18 unexpended balance remaining in Fund 3078, the Courtesy
19 Patrol, at the close of the fiscal year 2011, the State Auditor
20 shall transfer \$1,000,000 to Fund 3072, the Tourism
21 Promotion Fund.

1 **Sec. 11. State improvement fund appropriations.** -
2 Bequests or donations of nonpublic funds, received by the
3 governor on behalf of the state during the fiscal year 2012,
4 for the purpose of making studies and recommendations

*CLERK'S NOTE: The Chief Executive reduced Item 378, line 2, by \$250,000, from \$500,000 to \$250,000. The total does NOT reflect the reduction by the Governor.

5 relative to improvements of the administration and
6 management of spending units in the executive branch of
7 state government, shall be deposited in the state treasury in
8 a separate account therein designated state improvement
9 fund.

10 There are hereby appropriated all moneys so deposited
11 during the fiscal year 2012 to be expended as authorized by
12 the governor, for such studies and recommendations which
13 may encompass any problems of organization, procedures,
14 systems, functions, powers or duties of a state spending unit
15 in the executive branch, or the betterment of the economic,
16 social, educational, health and general welfare of the state or
17 its citizens.

1 **Sec. 12. Specific funds and collection accounts.** - A fund
2 or collection account which by law is dedicated to a specific
3 use is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account and shall
5 be expended according to the provisions of Article 3, Chapter
6 12 of the Code.

1 **Sec. 13. Appropriations for refunding erroneous**
2 **payment.** - Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he or she
7 shall issue his or her requisition upon the auditor for the
8 refunding of the proper amount. The auditor shall issue his or
9 her warrant to the treasurer and the treasurer shall pay the
10 warrant out of the fund into which the amount was originally
11 paid.

1 **Sec. 14. Sinking fund deficiencies.** - There is hereby
2 appropriated to the governor a sufficient amount to meet any

3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development
5 fund which is under the supervision and control of the
6 municipal bond commission as provided by W.Va. Code
7 §31-18-20b, or in the funds of the municipal bond
8 commission because of the failure of any state agency for
9 either general obligation or revenue bonds or any local taxing
10 district for general obligation bonds to remit funds necessary
11 for the payment of interest and sinking fund requirements.
12 The governor is authorized to transfer from time to time such
13 amounts to the municipal bond commission as may be
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state
16 of West Virginia through the governor from the first
17 remittance collected from the West Virginia housing
18 development fund or from any state agency or local taxing
19 district for which the governor advanced funds, with interest
20 at the rate carried by the bonds for security or payment of
21 which the advance was made.

1 **Sec. 15. Appropriations for local governments.** - There
2 are hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations
5 and which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.** - Where only a total sum
2 is appropriated to a spending unit, the total sum shall include
3 personal services, annual increment, employee benefits,
4 current expenses, repairs and alterations, equipment and

5 capital outlay, where not otherwise specifically provided and
6 except as otherwise provided in TITLE I - GENERAL
7 PROVISIONS, Sec. 3.

1 **Sec. 17. General school fund.** - The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with W.Va. Code
5 §18-9A-16.

TITLE III - ADMINISTRATION.

1 **Sec. 1. Appropriations conditional.** - The expenditure of
2 the appropriations made by this act, except those
3 appropriations made to the legislative and judicial branches
4 of the state government, are conditioned upon the compliance
5 by the spending unit with the requirements of Article 2,
6 Chapter 11B of the Code.

7 Where spending units or parts of spending units have been
8 absorbed by or combined with other spending units, it is the
9 intent of this act that appropriations and reappropriations
10 shall be to the succeeding or later spending unit created,
11 unless otherwise indicated.

1 **Sec. 2. Constitutionality.** - If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of this
4 act which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 12

**(Com. Sub. for H. B. 2562 - By Delegates Morgan,
Stephens, Hartman, Manypenny, Martin,
Staggers, Swartzmiller, Talbott and Azinger)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-5A-3a, relating to the State Athletic Commission; authorizing the commission to regulate mixed martial arts; providing for use of the unified rules of mixed martial arts; stating powers of the commission; defining terms; creating licensing requirements; providing for rule-making authority; and prohibiting municipalities from imposing a license tax on mixed martial arts clubs.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-5A-3a, to read as follows:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-3a. Power to regulate mixed martial arts.

- 1 (a) The commission has sole power, direction,
- 2 management and control over all professional mixed martial

3 arts contests, matches and exhibitions, or any form thereof,
4 to be promoted, conducted, held or given within the state.

5 (b) As used in this article, the term “mixed martial arts”
6 means a combative sporting contest, the rules of which allow
7 two competitors to attempt to achieve dominance over one
8 another by utilizing a variety of techniques including, but not
9 limited to, striking, grappling and the application of
10 submission holds.

11 (c) A mixed martial arts contest, match or exhibition
12 promoted, conducted, held or given within the state shall be
13 under the commission’s authority and be in accordance with
14 the provision of this section. The provisions of this article
15 that apply to boxing shall also apply to mixed martial arts as
16 appropriate.

17 (d) In exercising its jurisdiction over professional mixed
18 martial arts contests, matches and exhibitions, the
19 commission shall follow the current unified rules of mixed
20 martial arts as adopted by the Association of Boxing
21 Commissions, to enable the proper licensing of all
22 participants, referees and judges, and the approval of
23 contests, matches or exhibitions conducted under the
24 provisions of this section.

25 (e) The commission may issue and revoke a license to
26 promote, conduct, hold or give mixed martial arts contests,
27 matches or exhibitions and may issue and revoke a license to
28 be a contestant. Each license is subject to the provisions of
29 this section and article, and the rules of the commission.

30 (f) The commission shall propose rules for legislative
31 approval, in accordance with the provisions of article three,
32 chapter twenty-nine-a of this code, to implement the
33 provisions of this section, including:

34 (1) Procedures and requirements for the issuance and
35 renewal of licenses: *Provided*, That the procedures and
36 requirements shall not:

37 (A) Limit or prohibit mixed martial arts contests, matches
38 or exhibitions; nor

39 (B) Include a provision that a licensee be a West Virginia
40 resident;

41 (2) Exemptions from licensure;

42 (3) Procedures for revoking licenses;

43 (4) Adopting the unified rules of mixed martial arts;

44 (5) A fee schedule;

45 (6) Limitations or restrictions necessary to guarantee the
46 safety of the participants;

47 (7) The requirements for fair and honest conducting of
48 the contests, matches or exhibitions; and

49 (8) Any other rules necessary to effectuate the provisions
50 of this section.

51 (g) Notwithstanding the provisions of this code to the
52 contrary, a municipality may not impose a municipal license tax
53 under section four, article thirteen, chapter eight of this code on
54 mixed martial arts clubs. The granting of a license to a club by
55 the commission, or the holding of a license by a club, individual,
56 corporation or association, does not prevent the commission
57 from revoking the license to conduct an event, as provided in
58 this section: *Provided*, That nothing in this subsection limits the
59 authority of a municipality to impose any other taxes or fees on
60 mixed martial arts contests, matches or exhibitions, pursuant to
61 article thirteen, chapter eight of this code.

CHAPTER 13

**(Com. Sub. for H. B. 2693 - By Delegates
Fleischauer, Ellem, Overington, Hunt,
Skaff, Lane and Rodighiero)**

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-16B-6e; to amend said code by adding thereto a new section, designated §9-5-21; to amend said code by adding thereto a new section, designated §33-16-3v; to amend said code by adding thereto a new section, designated §33-24-7k; and to amend said code by adding thereto a new section, designated §33-25A-8j, all relating to requiring insurance coverage for autism spectrum disorders; providing for an effective date for coverage; providing definitions; setting out age limitations; providing for coverage amounts and time frames; setting forth who may provide appropriate treatment; providing reporting requirements to determine if treatment remains effective; allowing for cost saving measures in specified instances; providing the provisions are only required to the extent required by federal law; and providing reporting requirements by state agencies.

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; that said code be amended by adding thereto a new section, designated §5-16B-6e; that said code be

amended by adding thereto a new section, designated §9-5-21; that said code be amended by adding thereto a new section, designated §33-16-3v; that said code be amended by adding thereto a new section, designated §33-24-7k; that said code be amended by adding thereto a new section, designated §33-25A-8j, all to read as follows:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7. 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
2 surgical insurance plan or plans, a group prescription drug
3 insurance plan or plans, a group major medical insurance
4 plan or plans and a group life and accidental death insurance
5 plan or plans for those employees herein made eligible, and
6 to establish and promulgate rules for the administration of
7 these plans, subject to the limitations contained in this article.
8 Those plans shall include:

9 (1) Coverages and benefits for X ray and laboratory
10 services in connection with mammograms when medically
11 appropriate and consistent with current guidelines from the
12 United States Preventive Services Task Force; pap smears,
13 either conventional or liquid-based cytology, whichever is

14 medically appropriate and consistent with the current
15 guidelines from either the United States Preventive Services
16 Task Force or The American College of Obstetricians and
17 Gynecologists; and a test for the human papilloma virus
18 (HPV) when medically appropriate and consistent with
19 current guidelines from either the United States Preventive
20 Services Task Force or The American College of
21 Obstetricians and Gynecologists, when performed for cancer
22 screening or diagnostic services on a woman age eighteen or
23 over;

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

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

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

41 (5) For plans which provide coverages for post-delivery
42 care to a mother and her newly born child in the home,
43 coverage for inpatient care following childbirth as provided
44 in subdivision (4) of this subsection if inpatient care is
45 determined to be medically necessary by the attending
46 physician. Those plans may also include, among other

47 things, medicines, medical equipment, prosthetic appliances
48 and any other inpatient and outpatient services and expenses
49 considered appropriate and desirable by the agency; and

50 (6) Coverage for treatment of serious mental illness.

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

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

74 (C) The agency shall not discriminate between
75 medical-surgical benefits and mental health benefits in the
76 administration of its plan. With regard to both
77 medical-surgical and mental health benefits, it may make
78 determinations of medical necessity and appropriateness, and
79 it may use recognized health care quality and cost management

80 tools, including, but not limited to, limitations on inpatient and
81 outpatient benefits, utilization review, implementation of
82 cost-containment measures, preauthorization for certain
83 treatments, setting coverage levels, setting maximum number
84 of visits within certain time periods, using capitated benefit
85 arrangements, using fee-for-service arrangements, using
86 third-party administrators, using provider networks and using
87 patient cost sharing in the form of copayments, deductibles and
88 coinsurance.

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

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

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

111 (8)(A) Any plan issued or renewed after January 1, 2012,
112 shall include coverage for diagnosis and treatment of autism

113 spectrum disorder in individuals ages eighteen months
114 through eighteen years. To be eligible for coverage and
115 benefits under this subdivision, the individual must be
116 diagnosed with autism spectrum disorder at age 8 or younger.
117 Such policy shall provide coverage for treatments that are
118 medically necessary and ordered or prescribed by a licensed
119 physician or licensed psychologist for an individual
120 diagnosed with autism spectrum disorder, in accordance with
121 a treatment plan developed by a certified behavior analyst
122 pursuant to a comprehensive evaluation or reevaluation of the
123 individual, subject to review by the agency every six months.
124 Progress reports are required to be filed with the agency
125 semi-annually. In order for treatment to continue, the agency
126 must receive objective evidence or a clinically supportable
127 statement of expectation that:

128 (1) The individual's condition is improving in response
129 to treatment; and

130 (2) A maximum improvement is yet to be attained; and

131 (3) There is an expectation that the anticipated
132 improvement is attainable in a reasonable and generally
133 predictable period of time.

134 (B) Such coverage shall include, but not be limited to,
135 applied behavioral analysis provided or supervised by a
136 certified behavior analyst: *Provided*, That the annual
137 maximum benefit for treatment required by this subdivision
138 shall be in amount not to exceed \$30,000 per individual, for
139 three consecutive years from the date treatment commences.
140 At the conclusion of the third year, required coverage shall be
141 in an amount not to exceed \$2000 per month, until the
142 individual reaches eighteen years of age, as long as the
143 treatment is medically necessary and in accordance with a
144 treatment plan developed by a certified behavior analyst
145 pursuant to a comprehensive evaluation or reevaluation of the

146 individual. This section shall not be construed as limiting,
147 replacing or affecting any obligation to provide services to an
148 individual under the Individuals with Disabilities Education
149 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
150 other publicly funded programs. Nothing in this subdivision
151 shall be construed as requiring reimbursement for services
152 provided by public school personnel.

153 (C) On or before January 1 each year, the agency shall
154 file an annual report with the joint committee on government
155 and finance describing its implementation of the coverage
156 provided pursuant to this subdivision. The report shall
157 include, but shall not be limited to, the number of individuals
158 in the plan utilizing the coverage required by this subdivision,
159 the fiscal and administrative impact of the implementation,
160 and any recommendations the agency may have as to changes
161 in law or policy related to the coverage provided under this
162 subdivision. In addition, the agency shall provide such other
163 information as may be required by the joint committee on
164 government and finance as it may from time to time request.

165 (D) For purposes of this subdivision, the term:

166 (i) “Applied Behavior Analysis” means the design,
167 implementation, and evaluation of environmental
168 modifications using behavioral stimuli and consequences, to
169 produce socially significant improvement in human behavior,
170 including the use of direct observation, measurement, and
171 functional analysis of the relationship between environment
172 and behavior.

173 (ii) “Autism spectrum disorder” means any pervasive
174 developmental disorder, including autistic disorder, Asperger’s
175 Syndrome, Rett Syndrome, childhood disintegrative disorder, or
176 Pervasive Development Disorder as defined in the most recent
177 edition of the Diagnostic and Statistical Manual of Mental
178 Disorders of the American Psychiatric Association.

179 (iii) “Certified behavior analyst” means an individual
180 who is certified by the Behavior Analyst Certification Board
181 or certified by a similar nationally recognized organization.

182 (iv) “Objective evidence” means standardized patient
183 assessment instruments, outcome measurements tools or
184 measurable assessments of functional outcome. Use of
185 objective measures at the beginning of treatment, during
186 and/or after treatment is recommended to quantify progress
187 and support justifications for continued treatment. Such tools
188 are not required, but their use will enhance the justification
189 for continued treatment.

190 (E) To the extent that the application of this subdivision
191 for autism spectrum disorder causes an increase of at least
192 one percent of actual total costs of coverage for the plan year
193 the agency may apply additional cost containment measures.

194 (F) To the extent that the provisions of this subdivision
195 requires benefits that exceed the essential health benefits
196 specified under section 1302(b) of the Patient Protection and
197 Affordable Care Act, Pub. L. No. 111-148, as amended, the
198 specific benefits that exceed the specified essential health
199 benefits shall not be required of insurance plans offered by
200 the public employees insurance agency.

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

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

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

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

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

221 (4) Any other categorization which would ensure the
222 stability of the overall program.

223 (d) The agency shall maintain the medical and
224 prescription drug coverage for Medicare-eligible retirees by
225 providing coverage through one of the existing plans or by
226 enrolling the Medicare-eligible retired employees into a
227 Medicare-specific plan, including, but not limited to, the
228 Medicare/Advantage Prescription Drug Plan. In the event that
229 a Medicare-specific plan would no longer be available or
230 advantageous for the agency and the retirees, the retirees
231 shall remain eligible for coverage through the agency.

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH
INSURANCE PROGRAM.**

**§5-16B-6e. Coverage for treatment of autism spectrum
disorders.**

1 (a) To the extent that the diagnosis and treatment of
2 autism spectrum disorders are not already covered by this
3 agency, after January 1, 2012, a policy, plan or contract
4 subject to this section shall provide coverage for such

5 diagnosis and treatment, for individuals ages eighteen months
6 through eighteen years. To be eligible for coverage and
7 benefits under this section, the individual must be diagnosed
8 with autism spectrum disorder at age eight or younger. Such
9 policy shall provide coverage for treatments that are
10 medically necessary and ordered or prescribed by a licensed
11 physician or licensed psychologist for an individual
12 diagnosed with autism spectrum disorder, in accordance with
13 a treatment plan developed by a certified behavior analyst
14 pursuant to a comprehensive evaluation or reevaluation of the
15 individual subject to review by the agency every six months.
16 Progress reports are required to be filed with the agency
17 semi-annually. In order for treatment to continue, objective
18 evidence or a clinically supportable statement of expectation
19 that:

20 (1) The individual's condition is improving in response
21 to treatment; and

22 (2) Maximum improvement is yet to be attained; and

23 (3) There is an expectation that the anticipated
24 improvement is attainable in a reasonable and generally
25 predictable period of time.

26 (b) Such coverage shall include, but not be limited to,
27 applied behavioral analysis provided or supervised by a
28 certified behavior analyst: *Provided*, That the annual
29 maximum benefit for treatment required by this section shall
30 be in amount not to exceed \$30,000 per individual, for three
31 consecutive years from the date treatment commences. At
32 the conclusion of the third year, required coverage shall be in
33 an amount not to exceed \$2000 per month, until the
34 individual reaches eighteen years of age, as long as the
35 treatment is medically necessary and in accordance with a
36 treatment plan developed by a certified behavior analyst
37 pursuant to a comprehensive evaluation or reevaluation of the

38 individual. This section shall not be construed as limiting,
39 replacing or affecting any obligation to provide services to an
40 individual under the Individuals with Disabilities Education
41 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
42 other publicly funded programs. Nothing in this section shall
43 be construed as requiring reimbursement for services
44 provided by public school personnel.

45 (c) On or before January 1 each year, the agency shall file
46 an annual report with the joint committee on government and
47 finance describing its implementation of the coverage
48 provided pursuant to this section. The report shall include,
49 but shall not be limited to the number of individuals in the
50 plan utilizing the coverage required by this section, the fiscal
51 and administrative impact of the implementation, and any
52 recommendations the agency may have as to changes in law
53 or policy related to the coverage provided under this
54 section. In addition, the agency shall provide such other
55 information as may be requested by the joint committee on
56 government and finance as it may from time to time request.

57 (d) For purposes of this section, the term:

58 (1) “Applied Behavior Analysis” means the design,
59 implementation, and evaluation of environmental
60 modifications using behavioral stimuli and consequences, to
61 produce socially significant improvement in human behavior,
62 including the use of direct observation, measurement, and
63 functional analysis of the relationship between environment
64 and behavior.

65 (2) “Autism spectrum disorder” means any pervasive
66 developmental disorder, including autistic disorder, Asperger’s
67 Syndrome, Rett Syndrome, childhood disintegrative disorder, or
68 Pervasive Development Disorder as defined in the most recent
69 edition of the Diagnostic and Statistical Manual of Mental
70 Disorders of the American Psychiatric Association.

71 (3) “Certified behavior analyst” means an individual who
 72 is certified by the Behavior Analyst Certification Board or
 73 certified by a similar nationally recognized organization.

74 (4) “Objective evidence” means standardized patient
 75 assessment instruments, outcome measurements tools or
 76 measurable assessments of functional outcome. Use of
 77 objective measures at the beginning of treatment, during
 78 and/or after treatment is recommended to quantify progress
 79 and support justifications for continued treatment. Such tools
 80 are not required, but their use will enhance the justification
 81 for continued treatment.

82 (e) To the extent that the application of this section for
 83 autism spectrum disorder causes an increase of at least one
 84 percent of actual total costs of coverage for the plan year the
 85 agency may apply additional cost containment measures.

86 (f) To the extent that the provisions of this section
 87 requires benefits that exceed the essential health benefits
 88 specified under section 1302(b) of the Patient Protection and
 89 Affordable Care Act, Pub. L. No. 111-148, as amended, the
 90 specific benefits that exceed the specified essential health
 91 benefits shall not be required of the West Virginia Children’s
 92 Health Insurance Program.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

**§9-5-21. Annual report to joint committee on government and
 finance regarding treatment for autism spectrum
 disorders provided by the Bureau for Medical
 Services.**

1 (a) On or before January 1 each year, the agency shall file
 2 an annual report with the joint committee on government and

3 finance describing the number of enrolled individuals with
4 autism spectrum disorder, including the fiscal and
5 administrative impact of treatment of autism spectrum
6 disorders, and any recommendations the agency may have as
7 to changes in law or policy related to such disorder. In
8 addition, the agency shall provide such other information as
9 may be requested by the joint committee on government and
10 finance as it may from time to time request.

11 (b) For purposes of this section, the term “autism
12 spectrum disorder” means any pervasive developmental
13 disorder, including autistic disorder, Asperger’s Syndrome,
14 Rett Syndrome, childhood disintegrative disorder, or
15 Pervasive Development Disorder as defined in the most
16 recent edition of the Diagnostic and Statistical Manual of
17 Mental Disorders of the American Psychiatric Association.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3v. Required coverage for treatment of autism spectrum disorders.

1 (a) Any insurer who, on or after January 1, 2012,
2 delivers, renews or issues a policy of group accident and
3 sickness insurance in this State under the provisions of this
4 article shall include coverage for diagnosis and treatment of
5 autism spectrum disorder in individuals ages eighteen months
6 through eighteen years. To be eligible for coverage and
7 benefits under this section, the individual must be diagnosed
8 with autism spectrum disorder at age 8 or younger. Such
9 policy shall provide coverage for treatments that are
10 medically necessary and ordered or prescribed by a licensed
11 physician or licensed psychologist for an individual
12 diagnosed with autism spectrum disorder, in accordance with

13 a treatment plan developed by a certified behavior analyst
14 pursuant to a comprehensive evaluation or reevaluation of the
15 individual, subject to review by the agency every six months.
16 Progress reports are required to be filed with the insurer
17 semi-annually. In order for treatment to continue, the insurer
18 must receive objective evidence or a clinically supportable
19 statement of expectation that:

20 (1) The individual's condition is improving in response
21 to treatment; and

22 (2) A maximum improvement is yet to be attained; and

23 (3) There is an expectation that the anticipated
24 improvement is attainable in a reasonable and generally
25 predictable period of time.

26 (b) Such coverage shall include, but not be limited to,
27 applied behavioral analysis provided or supervised by a
28 certified behavioral analyst: *Provided*, That the annual
29 maximum benefit for treatment required by this subdivision
30 shall be in amount not to exceed \$30,000 per individual, for
31 three consecutive years from the date treatment commences.
32 At the conclusion of the third year, required coverage shall be
33 in an amount not to exceed \$2000 per month, until the
34 individual reaches eighteen years of age, as long as the
35 treatment is medically necessary and in accordance with a
36 treatment plan developed by a certified behavioral analyst
37 pursuant to a comprehensive evaluation or reevaluation of the
38 individual. This section shall not be construed as limiting,
39 replacing or affecting any obligation to provide services to an
40 individual under the Individuals with Disabilities Education
41 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
42 other publicly funded programs. Nothing in this section shall
43 be construed as requiring reimbursement for services
44 provided by public school personnel.

45 (c) For purposes of this section, the term:

46 (1) “Applied Behavior Analysis” means the design,
47 implementation, and evaluation of environmental
48 modifications using behavioral stimuli and consequences, to
49 produce socially significant improvement in human behavior,
50 including the use of direct observation, measurement, and
51 functional analysis of the relationship between environment
52 and behavior.

53 (2) “Autism spectrum disorder” means any pervasive
54 developmental disorder, including autistic disorder, Asperger’s
55 Syndrome, Rett Syndrome, childhood disintegrative disorder, or
56 Pervasive Development Disorder as defined in the most recent
57 edition of the Diagnostic and Statistical Manual of Mental
58 Disorders of the American Psychiatric Association.

59 (3) “Certified behavior analyst” means an individual who
60 is certified by the Behavior Analyst Certification Board or
61 certified by a similar nationally recognized organization.

62 (4) “Objective evidence” means standardized patient
63 assessment instruments, outcome measurements tools or
64 measurable assessments of functional outcome. Use of
65 objective measures at the beginning of treatment, during
66 and/or after treatment is recommended to quantify progress
67 and support justifications for continued treatment. Such tools
68 are not required, but their use will enhance the justification
69 for continued treatment.

70 (d) The provisions of this section do not apply to small
71 employers. For purposes of this section a small employer
72 shall be defined as any person, firm, corporation, partnership
73 or association actively engaged in business in the state of
74 West Virginia who, during the preceding calendar year,
75 employed an average of no more than twenty-five eligible
76 employees.

77 (e) To the extent that the application of this section for
78 autism spectrum disorder causes an increase of at least one
79 percent of actual total costs of coverage for the plan year the
80 insurer may apply additional cost containment measures.

81 (f) To the extent that the provisions of this section
82 requires benefits that exceed the essential health benefits
83 specified under section 1302(b) of the Patient Protection and
84 Affordable Care Act, Pub. L. No. 111-148, as amended, the
85 specific benefits that exceed the specified essential health
86 benefits shall not be required of a health benefit plan when
87 the plan is offered by a health care insurer in this state.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7k. Coverage for diagnosis and treatment of autism spectrum disorders.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article, for policies issued
4 or renewed on or after January 1, 2012, delivers, renews or
5 issues a policy of group accident and sickness insurance in
6 this State under the provisions of this article shall include
7 coverage for diagnosis and treatment of autism spectrum
8 disorder in individuals ages eighteen months through
9 eighteen years. To be eligible for coverage and benefits
10 under this section, the individual must be diagnosed with
11 autism spectrum disorder at age 8 or younger. Such policy
12 shall provide coverage for treatments that are medically
13 necessary and ordered or prescribed by a licensed physician
14 or licensed psychologist for an individual diagnosed with
15 autism spectrum disorder, in accordance with a treatment
16 plan developed by a certified behavior analyst pursuant to a
17 comprehensive evaluation or reevaluation of the individual,
18 subject to review by the corporation every six months.
19 Progress reports are required to be filed with the corporation

20 semi-annually. In order for treatment to continue, the agency
21 must receive objective evidence or a clinically supportable
22 statement of expectation that:

23 (1) The individual's condition is improving in response
24 to treatment; and

25 (2) A maximum improvement is yet to be attained; and

26 (3) There is an expectation that the anticipated
27 improvement is attainable in a reasonable and generally
28 predictable period of time.

29 (b) Such coverage shall include, but not be limited to,
30 applied behavioral analysis provided or supervised by a
31 certified behavioral analyst: *Provided*, That the annual
32 maximum benefit for treatment required by this section shall
33 be in amount not to exceed \$30,000 per individual, for three
34 consecutive years from the date treatment commences. At
35 the conclusion of the third year, required coverage shall be in
36 an amount not to exceed \$2000 per month, until the
37 individual reaches eighteen years of age, as long as the
38 treatment is medically necessary and in accordance with a
39 treatment plan developed by a certified behavior analyst
40 pursuant to a comprehensive evaluation or reevaluation of the
41 individual. This section shall not be construed as limiting,
42 replacing or affecting any obligation to provide services to an
43 individual under the Individuals with Disabilities Education
44 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
45 other publicly funded programs. Nothing in this section shall
46 be construed as requiring reimbursement for services
47 provided by public school personnel.

48 (c) For purposes of this section, the term:

49 (1) "Applied Behavior Analysis" means the design,
50 implementation, and evaluation of environmental
51 modifications using behavioral stimuli and consequences, to

52 produce socially significant improvement in human behavior,
53 including the use of direct observation, measurement, and
54 functional analysis of the relationship between environment
55 and behavior.

56 (2) “Autism spectrum disorder” means any pervasive
57 developmental disorder, including autistic disorder, Asperger’s
58 Syndrome, Rett Syndrome, childhood disintegrative disorder, or
59 Pervasive Development Disorder as defined in the most recent
60 edition of the Diagnostic and Statistical Manual of Mental
61 Disorders of the American Psychiatric Association.

62 (3) “Certified behavior analyst” means an individual who
63 is certified by the Behavior Analyst Certification Board or
64 certified by a similar nationally recognized organization.

65 (4) “Objective evidence” means standardized patient
66 assessment instruments, outcome measurements tools or
67 measurable assessments of functional outcome. Use of
68 objective measures at the beginning of treatment, during
69 and/or after treatment is recommended to quantify progress
70 and support justifications for continued treatment. Such tools
71 are not required, but their use will enhance the justification
72 for continued treatment.

73 (d) The provisions of this section do not apply to small
74 employers. For purposes of this section a small employer
75 shall be defined as any person, firm, corporation, partnership
76 or association actively engaged in business in the state of
77 West Virginia who, during the preceding calendar year,
78 employed an average of no more than twenty-five eligible
79 employees.

80 (e) To the extent that the application of this section for
81 autism spectrum disorder causes an increase of at least one
82 percent of actual total costs of coverage for the plan year the
83 corporation may apply additional cost containment measures.

84 (f) To the extent that the provisions of this section
85 requires benefits that exceed the essential health benefits
86 specified under section 1302(b) of the Patient Protection and
87 Affordable Care Act, Pub. L. No. 111-148, as amended, the
88 specific benefits that exceed the specified essential health
89 benefits shall not be required of a health benefit plan when
90 the plan is offered by a corporation in this state.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION
ACT.**

**§33-25A-8j. Coverage for diagnosis and treatment of autism
spectrum disorders.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article, for policies issued
4 or renewed on or after January 1, 2012, delivers, renews or
5 issues a policy of group accident and sickness insurance in
6 this State under the provisions of this article shall include
7 coverage for diagnosis and treatment of autism spectrum
8 disorder in individuals ages eighteen months through
9 eighteen years. To be eligible for coverage and benefits
10 under this section, the individual must be diagnosed with
11 autism spectrum disorder at age 8 or younger. Such policy
12 shall provide coverage for treatments that are medically
13 necessary and ordered or prescribed by a licensed physician
14 or licensed psychologist for an individual diagnosed with
15 autism spectrum disorder, in accordance with a treatment
16 plan developed by a certified behavioral analyst pursuant to
17 a comprehensive evaluation or reevaluation of the individual,
18 subject to review by the health maintenance organization
19 every six months. Progress reports are required to be filed
20 with the health maintenance organization semi-annually. In
21 order for treatment to continue, the health maintenance
22 organization must receive objective evidence or a clinically
23 supportable statement of expectation that:

24 (1) The individual's condition is improving in response
25 to treatment; and

26 (2) A maximum improvement is yet to be attained; and

27 (3) There is an expectation that the anticipated
28 improvement is attainable in a reasonable and generally
29 predictable period of time.

30 (b) Such coverage shall include, but not be limited to,
31 applied behavioral analysis provided or supervised by a
32 certified behavioral analyst: *Provided*, That the annual
33 maximum benefit for treatment required by this subdivision
34 shall be in amount not to exceed \$30,000 per individual, for
35 three consecutive years from the date treatment commences.
36 At the conclusion of the third year, required coverage shall be
37 in an amount not to exceed \$2000 per month, until the
38 individual reaches eighteen years of age, as long as the
39 treatment is medically necessary and in accordance with a
40 treatment plan developed by a certified behavior analyst
41 pursuant to a comprehensive evaluation or reevaluation of the
42 individual. This section shall not be construed as limiting,
43 replacing or affecting any obligation to provide services to an
44 individual under the Individuals with Disabilities Education
45 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
46 other publicly funded programs. Nothing in this section shall
47 be construed as requiring reimbursement for services
48 provided by public school personnel.

49 (c) For purposes of this section, the term:

50 (1) "Applied Behavior Analysis" means the design,
51 implementation, and evaluation of environmental
52 modifications using behavioral stimuli and consequences, to
53 produce socially significant improvement in human behavior,
54 including the use of direct observation, measurement, and

55 functional analysis of the relationship between environment
56 and behavior.

57 (2) “Autism spectrum disorder” means any pervasive
58 developmental disorder, including autistic disorder, Asperger’s
59 Syndrome, Rett Syndrome, childhood disintegrative disorder, or
60 Pervasive Development Disorder as defined in the most recent
61 edition of the Diagnostic and Statistical Manual of Mental
62 Disorders of the American Psychiatric Association.

63 (3) “Certified behavior analyst” means an individual who
64 is certified by the Behavior Analyst Certification Board or
65 certified by a similar nationally recognized organization.

66 (4) “Objective evidence” means standardized patient
67 assessment instruments, outcome measurements tools or
68 measurable assessments of functional outcome. Use of
69 objective measures at the beginning of treatment, during
70 and/or after treatment is recommended to quantify progress
71 and support justifications for continued treatment. Such tools
72 are not required, but their use will enhance the justification
73 for continued treatment.

74 (d) The provisions of this section do not apply to small
75 employers. For purposes of this section a small employer
76 shall be defined as any person, firm, corporation, partnership
77 or association actively engaged in business in the state of
78 West Virginia who, during the preceding calendar year,
79 employed an average of no more than twenty-five eligible
80 employees.

81 (e) To the extent that the application of this section for
82 autism spectrum disorder causes an increase of at least one
83 percent of actual total costs of coverage for the plan year the
84 health maintenance organization may apply additional cost
85 containment measures.

86 (f) To the extent that the provisions of this section
 87 requires benefits that exceed the essential health benefits
 88 specified under section 1302(b) of the Patient Protection and
 89 Affordable Care Act, Pub. L. No. 111-148, as amended, the
 90 specific benefits that exceed the specified essential health
 91 benefits shall not be required of a health benefit plan when
 92 the plan is offered by a health maintenance organization in
 93 this state.



CHAPTER 14

**(Com. Sub. for H. B. 2962 - By Delegates Perry,
 Hartman, Moore, Reynolds, Hall,
 Walters, J. Miller, Azinger and Ashley)**

[Passed February 22, 2011; in effect ninety days from passage.]
 [Approved by the Governor on March 3, 2011.]

AN ACT to amend and reenact §31-17-12 of the Code of West Virginia, 1931, as amended, relating to imposition of a fine or penalty by the Commissioner of Banking on residential mortgage brokers and lenders for a violation of the West Virginia Residential Mortgage Lender, Broker and Servicer Act; increasing the maximum amount of a fine or penalty that may be imposed from \$1000 to \$2000 for each violation; removing the requirement of prior notification from the commissioner before a fine or penalty may be imposed upon an unlicensed person who engages in the business or holds himself or herself out to the public as a mortgage lender or mortgage broker; and clarifying that a fine or penalty may be imposed for a violation of the Act.

Be it enacted by the Legislature of West Virginia:

That §31-17-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 17. WEST VIRGINIA RESIDENTIAL
MORTGAGE LENDER, BROKER
AND SERVICER ACT.**

**§31-17-12. Grounds for suspension or revocation of license;
suspension and revocation generally;
reinstatement or new license; penalties and fines
for violation of this article.**

1 (a) The commissioner may suspend or revoke any broker
2 or lender license issued hereunder if he or she finds that the
3 licensee or any owner, director, officer, member, partner,
4 stockholder, employee or agent of the licensee:

5 (1) Has knowingly violated any provision of this article
6 or any order, decision or rule of the commissioner lawfully
7 made pursuant to the authority of this article;

8 (2) Has knowingly made any material misstatement in the
9 application for the license;

10 (3) Does not have available the net worth required by the
11 provisions of section four of this article, if applicable;

12 (4) Has failed or refused to keep the bond required by this
13 article in full force and effect, if applicable;

14 (5) In the case of a foreign corporation, does not remain
15 qualified to do business in this state;

16 (6) Has committed any fraud or engaged in any dishonest
17 activities with respect to any mortgage loan business in this
18 state or failed to disclose any of the material particulars of

19 any mortgage loan transaction in this state to anyone entitled
20 to the information; or

21 (7) Has otherwise demonstrated bad faith, dishonesty or
22 any other quality indicating that the business of the licensee
23 in this state has not been or will not be conducted honestly or
24 fairly within the purpose of this article. It shall be a
25 demonstration of bad faith and an unfair or deceptive act or
26 practice to engage in a pattern of making loans where the
27 consumer has insufficient sources of income to timely repay
28 the debt and the lender had the primary intent to acquire the
29 property upon default rather than to derive profit from the
30 loan. This section may not limit any right the consumer may
31 have to bring an action for a violation of section one hundred
32 four, article six, chapter forty-six-a of this code in an
33 individual case.

34 The commissioner may also suspend or revoke the
35 license of a licensee if he or she finds the existence of any
36 ground upon which the license could have been refused or
37 any ground which would be cause for refusing a license to
38 the licensee were he or she then applying for the same. The
39 commissioner may also suspend or revoke the license of a
40 licensee pursuant to his or her authority under section
41 thirteen, article two, chapter thirty-one-a of this code.

42 (b) The suspension or revocation of the license of any
43 licensee does not impair or affect the obligation of any
44 preexisting lawful mortgage loan between the licensee and
45 any obligor.

46 (c) The commissioner may reinstate a suspended license,
47 or issue a new license to a licensee whose license has been
48 revoked, if the grounds upon which any license was
49 suspended or revoked have been eliminated or corrected and
50 the commissioner is satisfied that the grounds are not likely
51 to recur.

52 (d) In addition to the authority conferred under this
53 section, the commissioner may impose a fine or penalty not
54 exceeding \$2,000 upon any lender or broker required to be
55 licensed under this article who the commissioner determines
56 has violated any of the provisions of this article. For the
57 purposes of this section, each separate violation is subject to
58 the fine or penalty provided in this section. Each day
59 excluding Sundays and holidays, that an unlicensed person
60 engages in the business or holds himself or herself out to the
61 general public as a mortgage lender or broker is a separate
62 violation.

CHAPTER 15

**(Com. Sub. for H. B. 2882 - By Delegates Perry,
Moore, Reynolds, Hall, Walters, Hartman,
J. Miller, Azinger and Ashley)**

[Passed February 22, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 3, 2011.]

AN ACT to amend and reenact §31A-2-8 of the Code of West Virginia, 1931, as amended, relating to the Commissioner's Assessment and Examination Fund; allowing the Commissioner of Banking to assess state banking institutions quarterly rather than on a semiannual basis by establishing additional assessment dates on April 1 and October 1; and providing that the Commissioner of Banking shall prepare and send bank assessments by March 15 and September 15.

Be it enacted by the Legislature of West Virginia:

That §31A-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

1 (a) All moneys collected by the commissioner from
2 financial institutions and bank holding companies for
3 assessments, examination fees, investigation fees or other
4 necessary expenses incurred by the commissioner in
5 administering such duties shall be paid to the commissioner
6 and paid by the commissioner to the treasurer of the state to
7 the credit of a special revenue account to be known as the
8 "commissioner's assessment and examination fund" which is
9 hereby established. The assessments and fees paid into this
10 account shall be appropriated by law and used to pay the
11 costs and expenses of the Division of Banking and all
12 incidental costs and expenses necessary for its operations. At
13 the end of each fiscal year, if the fund contains a sum of
14 money in excess of twenty percent of the appropriated budget
15 of the Division of Banking, the amount of the excess shall be
16 transferred to the General Revenue Fund of the state. The
17 Legislature may appropriate money to start the special
18 revenue account.

19 (b) The Commissioner of Banking shall charge and
20 collect from each state banking institution or other financial
21 institution or bank holding company and pay into a special
22 revenue account in the State Treasury for the Division of
23 Banking assessments as follows:

24 (1) For each state banking institution, a quarterly assessment
25 payable on January 1, April 1, July 1, and October 1 each year,
26 computed upon the total assets of the banking institution shown
27 on the report of condition of the banking institution filed as of

28 the preceding June 30, September 30, December 31 and March
29 31, respectively, as follows:

30 **Total Assets**

31	But Not				Of Excess
32	Over	Over	This	Plus	Over
33	Million	Million	Amount		Million
34	\$ 0	\$ 2	\$ 0	.001645020	0
35	2	20	3,290	.000205628	2
36	20	100	6,991	.000164502	20
37	100	200	20,151	.000106926	100
38	200	1,000	30,844	.000090476	200
39	1,000	2,000	103,225	.000074026	1,000
40	2,000	6,000	177,251	.000065801	2,000
41	6,000	20,000	440,454	.000055988	6,000
42	20,000	40,000	1,224,292	.000052670	20,000

43 (2) For each regulated consumer lender, an annual
44 assessment payable on July 1, each year, computed upon the
45 total outstanding gross loan balances and installment sales
46 contract balances net of unearned interest of the regulated
47 consumer lender shown on the report of condition of the
48 regulated consumer lender as of the preceding thirty-first day
49 of December, respectively, as follows:

50 **Total Outstanding Balances**

51	But Not		This			Of Excess
52	Over	Over	Amount	Plus	Over	
53	\$ 0	\$ 1,000,000	800	-	-	-
54	1,000,000	5,000,000	800	.000400	1,000,000	
55	5,000,000	10,000,000	2,400	.000200	5,000,000	
56	10,000,000	-	4,200	.000100	10,000,000	

57 If a regulated consumer lender's records or documents
58 are maintained in more than one location in this state, then
59 eight hundred dollars may be added to the assessment for
60 each additional location.

61 In addition to the assessment provided in this subdivision,
 62 the commissioner shall charge and collect from each
 63 regulated consumer lender the actual and necessary costs and
 64 expenses incurred in connection with any examination of a
 65 regulated consumer lender.

66 (3) For each credit union, an annual assessment as
 67 provided for in section eight, article one, chapter thirty-one-c
 68 of this code as follows:

69	Total Assets				
70		But Not	This		Of Excess
71	Over	Over	Amount	Plus	Over
72	\$ 0	\$ 100,000	100	-	-
73	100,000	500,000	300	-	-
74	500,000	1,000,000	500	-	-
75	1,000,000	5,000,000	500	.000400	1,000,000
76	5,000,000	10,000,000	2,100	.000200	5,000,000
77	10,000,000	-	3,100	.000100	10,000,000

78 (4) For each bank holding company, an annual
 79 assessment as provided for in section eight, article eight-a of
 80 this chapter. The annual assessment may not exceed ten
 81 dollars per million dollars in deposits rounded off to the
 82 nearest million dollars.

83 (c) The commissioner shall each December, March, June
 84 and September prepare and send to each state banking
 85 institution a statement of the amount of the assessment due.
 86 The commissioner shall further, each June, prepare and send
 87 to each regulated consumer lender and each state credit union
 88 a statement of the amount of the assessment due. The
 89 commissioner shall annually, during the month of January,
 90 prepare and send to each bank holding company a statement
 91 of the amount of the assessment due.

92 State banking institution assessments may be prescribed
 93 every three months, not later than June 15, September 15,

94 December 15 and March 15 by written order of the
95 commissioner, but shall not exceed the maximums as set
96 forth in subsection (b) of this section. In setting the
97 assessments the primary consideration shall be the amount
98 appropriated by the Legislature for the Division of Banking
99 for the corresponding annual period. Reasonable notice of
100 the assessments shall be made to all interested parties. All
101 orders of the commissioner for the purpose of setting
102 assessments are not subject to the provisions of the West
103 Virginia administrative procedures act under chapter twenty-
104 nine-a of this code.

105 (d) For making an examination within the state of any
106 other financial institution for which assessments are not
107 provided by this code, the commissioner of banking shall
108 charge and collect from such other financial institution and
109 pay into the special revenue account for the Division of
110 Banking the actual and necessary costs and expenses incurred
111 in connection therewith, as fixed and determined by the
112 commissioner. Banks that provide only trust or other
113 nondepository services, nonbanking subsidiaries of bank
114 holding companies that provide trust services, nonbanking
115 subsidiaries of banks that provide trust services and any trust
116 entity that is jointly owned by federally insured depository
117 institutions may be assessed for necessary costs and expenses
118 associated with an examination pursuant to this subsection.

119 (e) If the records of an institution are located outside this
120 state, the institution at its option shall make them available to
121 the commissioner at a convenient location within the state or
122 pay the reasonable and necessary expenses for the
123 commissioner or his or her representatives to examine them
124 at the place where they are maintained. The commissioner
125 may designate representatives, including comparable officials
126 of the state in which the records are located, to inspect them
127 on his or her behalf.

128 (f) The Commissioner of Banking may maintain an action
129 for the recovery of all assessments, costs and expenses in any
130 court of competent jurisdiction.

CHAPTER 16

**(S. B. 507 - By Senators Kessler (Acting President),
Unger, Browning, Foster, Plymale,
Stollings, Klempa and Williams)**

[Passed February 25, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2011.]

AN ACT to amend and reenact §31-15C-3 and §31-15C-14 of the Code of West Virginia, 1931, as amended, all relating to the continuation of the Broadband Deployment Council.

Be it enacted by the Legislature of West Virginia:

That §31-15C-3 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-3. Broadband Deployment Council established; members of council; administrative support.

1 (a) The Broadband Deployment Council is continued.
2 The council is a governmental instrumentality of the state.
3 The exercise by the council of the powers conferred by this
4 article and the carrying out of its purpose and duties are
5 considered and held to be, and are hereby determined to be,

6 essential governmental functions and for a public purpose.
7 The council is created under the Department of Commerce
8 for administrative, personnel and technical support services
9 only.

10 (b) The council shall consist of eleven voting members,
11 designated as follows:

12 (1) The Governor or his or her designee;

13 (2) The Secretary of Commerce or his or her designee;

14 (3) The Secretary of Administration or his or her
15 designee;

16 (4) The Director of Homeland Security and Emergency
17 Management or his or her designee; and

18 (5) Seven public members that serve at the will and
19 pleasure of the Governor and are appointed by the Governor
20 with the advice and consent of the Senate, as follows:

21 (i) One member representing employees of
22 communications and cable providers who is a member or
23 representative of a union representing communications
24 workers;

25 (ii) One member representing telecommunications
26 providers who provide broadband services in this state;

27 (iii) One member representing cable operators who
28 provide broadband services in this state;

29 (iv) One member representing broadband equipment or
30 device manufacturers;

31 (v) One member representing higher education or
32 secondary education; and

33 (vi) Two members representing the general public who
34 are residents of the state, one of whom shall represent rural
35 communities, and who may not reside in the same
36 congressional district.

37 (6) In addition to the eleven voting members of the
38 council, the President of the Senate shall name two senators
39 from the West Virginia Senate and the Speaker of the House
40 shall name two delegates from the West Virginia House of
41 Delegates, each to serve in the capacity of an ex officio,
42 nonvoting advisory member of the council.

43 (c) The Secretary of Commerce or his or her designee
44 shall chair the council and appoint one of the other council
45 members to serve as vice chair. In the absence of the
46 Secretary of Commerce or his or her designee, the vice chair
47 shall serve as chair. The council shall appoint a
48 secretary-treasurer who need not be a member of the council
49 and who, among other tasks or functions designated by the
50 council, shall keep records of its proceedings.

51 (d) The council may appoint committees or
52 subcommittees to investigate and make recommendations to
53 the full council. Members of these committees or
54 subcommittees need not be members of the council.

55 (e) Six voting members of the council constitutes a
56 quorum and the affirmative vote of at least the majority of
57 those members present is necessary for any action taken by
58 vote of the council.

59 (f) The council is part-time. Public members appointed
60 by the Governor may pursue and engage in another business

61 or occupation or gainful employment. Any person employed
62 by, owning an interest in or otherwise associated with a
63 broadband deployment project, project sponsor or project
64 participant may serve as a council member and is not
65 disqualified from serving as a council member because of a
66 conflict of interest prohibited under section five, article two,
67 chapter six-b of this code and is not subject to prosecution for
68 violation of said section when the violation is created solely
69 as a result of his or her relationship with the broadband
70 deployment project, project sponsor or project participant so
71 long as the member recuses himself or herself from board
72 participation regarding the conflicting issue in the manner set
73 forth in legislative rules promulgated by the West Virginia
74 Ethics Commission.

75 (g) No member of the council who serves by virtue of his
76 or her office receives any compensation or reimbursement of
77 expenses for serving as a member. The public members and
78 members of any committees or subcommittees are entitled to
79 be reimbursed for actual and necessary expenses incurred for
80 each day or portion thereof engaged in the discharge of his or
81 her official duties in a manner consistent with the guidelines
82 of the Travel Management Office of the Department of
83 Administration.

§31-15C-14. Expiration of council.

1 The council shall continue to exist until December 31,
2 2014, unless sooner terminated, continued or reestablished
3 pursuant to an act of the Legislature.



CHAPTER 17

**(H. B. 2871 - By Delegates
Lawrence and Doyle)**

[Passed March 8, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §5B-2-6a of the Code of West Virginia, 1931, as amended, relating to brownfield economic development districts; and providing that governing bodies of municipalities and counties have regulatory and oversight authority over these districts.

Be it enacted by the Legislature of West Virginia:

That §5B-2-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

- 1 (a) Any property owner of a tract of land that is a
- 2 brownfield or voluntary remediated site pursuant to article
- 3 twenty-two, chapter twenty-two of this code may, if the site
- 4 and surrounding area were involved in the extraction and
- 5 processing of coal, limestone or other natural resources,
- 6 apply to the Development Office to become a brownfield
- 7 economic development district.

8 (1) Applicants for a brownfield economic development
9 district must demonstrate that the district when designated
10 will create significant economic development activity;

11 (2) Applicants shall submit a development plan that
12 provides specific details on proposed financial investment,
13 direct and indirect jobs to be created and the viability of the
14 district;

15 (3) Brownfield economic development districts:

16 (A) May not contain single-family housing;

17 (B) Shall provide all the infrastructure within the district
18 without cost to the state, county, public service district or
19 local municipal government;

20 (4) Applicants shall demonstrate that were it not for this
21 designation, the contemplated development would not be
22 possible and that the development is in the best interest of the
23 state;

24 (5) The applicant shall own or control the property within
25 the district;

26 (6) All costs for the application process shall be borne by
27 the applicant;

28 (7) An applicant shall demonstrate that the applicant has
29 attempted to work in good faith with local officials in regard
30 to land-use issues;

31 (8) Beginning July 1, 2011, an application for a
32 brownfield economic development district may not be
33 approved unless the district conforms to a county's or
34 municipality's planning and zoning laws established pursuant

35 to the provisions of article seven, eight and nine, of chapter
36 eight-a of this code.

37 (9) Prior to granting a designation of brownfield economic
38 development district, the applicant shall provide
39 documentation that the applicant has met all the requirements
40 set forth in article twenty-two, chapter twenty-two of this code
41 to be designated as a brownfield site or voluntary remediated
42 site and is in compliance with the remediation plan;

43 (10) Nothing may be construed by this section to exempt
44 brownfield economic districts from environmental regulation
45 that would pertain to the development;

46 (11) The decision of the development office in regard to
47 an application is final; and

48 (12) Once designated, the district shall work in
49 conjunction with the regional brownfield assistance centers of
50 Marshall University and West Virginia University as specified
51 in section seven, article eleven, chapter eighteen-b of this
52 code.

53 (b) The development office shall propose rules for
54 legislative approval in accordance with the provisions of
55 article three, chapter twenty-nine-a of this code to implement
56 this section and the rules shall include, but not be limited to,
57 the application and time line process, notice provisions,
58 additional application consideration criteria and application
59 fees sufficient to cover the costs of the consideration of an
60 application. The development office shall promulgate
61 emergency rules pursuant to the provisions of section fifteen,
62 article three, chapter twenty-nine-a of this code by October 1,
63 2008, to facilitate the initial implementation of this section.

CHAPTER 18

**(Com. Sub. for H. B. 3225 - By Delegates
M. Poling, Paxton, Perry, Ennis, Pethtel,
Shaver, Moye, Smith, Lawrence and L. Phillips)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18-2C-2 and §18-2C-3 of the Code of West Virginia, 1931, as amended, all relating to harassment, intimidation or bullying of students; expanding the definition of harassment, intimidation or bullying; expanding the areas where harassment, intimidation and bullying are prohibited to include school buses and school bus stops; requiring county board and West Virginia Department of Education policies regarding harassment, intimidation or bullying; and establishing reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §18-2C-2 and §18-2C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2C. HARASSMENT, INTIMIDATION OR
BULLYING PROHIBITION.**

§18-2C-2. Definitions.

- 1 (a) As used in this article, “harassment, intimidation or
- 2 bullying” means any intentional gesture, or any intentional

3 electronic, written, verbal or physical act, communication,
4 transmission or threat that:

5 (1) A reasonable person under the circumstances should
6 know will have the effect of any one or more of the
7 following:

8 (A) Physically harming a student;

9 (B) Damaging a student's property;

10 (C) Placing a student in reasonable fear of harm to his or
11 her person; or

12 (D) Placing a student in reasonable fear of damage to his
13 or her property;

14 (2) Is sufficiently severe, persistent or pervasive that it
15 creates an intimidating, threatening or emotionally abusive
16 educational environment for a student; or

17 (3) Disrupts or interferes with the orderly operation of the
18 school.

19 (b) As used in this article, an electronic act,
20 communication, transmission or threat includes but is not
21 limited to one which is administered via telephone, wireless
22 phone, computer, pager or any electronic or wireless device
23 whatsoever, and includes but is not limited to transmission of
24 any image or voice, email or text message using any such
25 device.

**§18-2C-3. Policy prohibiting harassment, intimidation or
bullying.**

1 (a) Each county board shall establish a policy prohibiting
2 harassment, intimidation or bullying. Each county board has

3 control over the content of its policy as long as the policy
4 contains, at a minimum, the requirements of subdivision (b)
5 of this section. The policy shall be adopted through a process
6 that includes representation of parents or guardians, school
7 employees, school volunteers, students and community
8 members.

9 (b) Each county board policy shall, at a minimum,
10 include the following components:

11 (1) A statement prohibiting harassment, intimidation or
12 bullying of any student on school property, a school bus, at
13 a school bus stop or at school sponsored events;

14 (2) A definition of harassment, intimidation or bullying
15 no less inclusive than that in section two of this article;

16 (3) A procedure for reporting prohibited incidents;

17 (4) A requirement that school personnel report prohibited
18 incidents of which they are aware;

19 (5) A requirement that parents or guardians of any
20 student involved in an incident prohibited pursuant to this
21 article be notified;

22 (6) A procedure for documenting any prohibited incident
23 that is reported;

24 (7) A procedure for responding to and investigating any
25 reported incident;

26 (8) A strategy for protecting a victim from additional
27 harassment, intimidation or bullying, and from retaliation
28 following a report;

29 (9) A disciplinary procedure for any student guilty of
30 harassment, intimidation or bullying;

31 (10) A requirement that any information relating to a
32 reported incident is confidential, and exempt from disclosure
33 under the provisions of chapter twenty-nine-b of this code;
34 and

35 (11) A requirement that each county board shall input
36 into the uniform integrated regional computer information
37 system (commonly known as the West Virginia Education
38 Information System) described in section twenty-six, article
39 two of this chapter, and compile an annual report regarding
40 the means of harassment, intimidation or bullying that have
41 been reported to them, and the reasons therefor, if known.
42 The West Virginia Department of Education shall compile
43 the information and report it annually beginning July 1, 2012,
44 to the Legislative Oversight Committee on Education
45 Accountability.

46 (c) Each county board shall adopt the policy and submit
47 a copy to the State Superintendent of Schools by December
48 1, 2011.

49 (d) To assist county boards in developing their policies,
50 the West Virginia Department of Education shall develop a
51 model policy applicable to grades kindergarten through
52 twelfth. The model policy shall be issued by September 1,
53 2011.

54 (e) Notice of the county board's policy shall appear in
55 any student handbook, and in any county board publication
56 that sets forth the comprehensive rules, procedures and
57 standards of conduct for the school.



CHAPTER 19

**(Com. Sub. for H. B. 2542 -
By Delegate Brown)**

[Amended and again passed, in an effort to meet the objections of
the Governor, March 18, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §37-13A-1, §37-13A-2 and §37-13A-5 of the Code of West Virginia, 1931, as amended, all relating to access to cemeteries and grave sites located on privately owned land generally; allowing access for the purposes of installation of monuments or grave markers; allowing access to an authorized person who has the written permission of a family member or descendant of a deceased person to enter the property solely for the purpose of installing monuments or grave markers or preparing the cemetery plot for burying a deceased person by those granted rights of burial to that plot; requiring notice and description of monuments or grave markers to be installed; permitting denial of installation by property owner; and providing injunctive relief.

Be it enacted by the Legislature of West Virginia:

That §37-13A-1, §37-13A-2 and §37-13A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.**§37-13A-1. Access of certain persons to cemeteries and graves located on private land.**

1 (a) Any authorized person who wishes to visit a cemetery
2 or grave site located on privately owned land and for which
3 no public ingress or egress is available, shall have the right to
4 reasonable ingress or egress for the purposes described in
5 subsection (c) of this section after providing the owner of the
6 privately owned land with reasonable notice as defined in
7 subsection (b) of this section.

8 (b) An authorized person intending to visit the cemetery
9 or grave site for the purpose of installing a monument or
10 grave marker pursuant to subdivision (2), subsection (c) of
11 this section, shall give reasonable notice to the property
12 owner which is to include a description of the monument or
13 grave marker to be installed. As used in this article,
14 “reasonable notice” means written notice of the date and time
15 the authorized person intends to visit the cemetery or grave
16 site delivered to the property owner at least ten days prior to
17 the date of the intended visit.

18 (c) The right of access to cemeteries or grave sites
19 provided in subsection (a) of this section shall be during
20 reasonable hours and only for the purposes of:

21 (1) Visiting graves;

22 (2) Maintaining the grave site or cemetery, including the
23 installation of a monument or a grave marker: *Provided*, That a
24 property owner may deny access to the cemetery or grave site
25 because the owner objects to the installation of the type or style
26 of the monument or grave marker that has been described in the
27 notice given pursuant to subsection (b) of this section;

28 (3) Burying a deceased person in a cemetery plot by
29 those granted rights of burial to that plot; and

30 (4) Conducting genealogy research.

31 (d)(1) The access route to the cemetery or grave site may
32 be designated by the landowner if no traditional access route
33 is obviously visible by a view of the property. If no
34 traditional access route is obviously visible by a view of the
35 property, the landowner is not required to incur any expense
36 in improving a designated access route.

37 (2) Unless the property owner has caused a traditional
38 access route to the cemetery or grave site to be unusable or
39 unavailable, the property owner is not required to make any
40 improvements to their property to satisfy the requirement of
41 providing reasonable ingress and egress to a cemetery or
42 burial site pursuant to this section.

43 (e) A property owner who is required to permit
44 authorized persons reasonable ingress and egress for the
45 purpose of visiting a cemetery or grave site and who acts in
46 good faith and in a reasonable manner pursuant to this section
47 is not liable for any personal injury or property damage that
48 occurs in connection with the access to the cemetery or grave
49 site.

50 (f) Nothing in this section shall be construed to limit or
51 modify the power or authority of a court in any action of law
52 or equity to order the disinterment and removal of the
53 remains from a cemetery and interment in a suitable location.

§37-13A-2. Definitions.

1 In this article:

2 (1) “Authorized person” means:

3 (A) A family member, close friend or descendant of a
4 deceased person;

5 (B) A cemetery plot owner;

6 (C) A person who has the written permission of a family
7 member or descendant of a deceased person to enter the
8 property solely for the purpose of installing monuments or
9 grave markers or preparing the cemetery plot for burying a
10 deceased person by those granted rights of burial to that plot;
11 or

12 (D) A person engaged in genealogy research.

13 (2) "Governmental subdivision" means any county
14 commission or municipality.

15 (3) "Reasonable ingress and egress" or "reasonable
16 access" means access to the cemetery or grave site within ten
17 days of the receipt of written notice of the intent to visit the
18 cemetery or grave site. If the property owner cannot provide
19 reasonable access to the cemetery or grave site on the desired
20 date, the property owner shall provide reasonable alternative
21 dates when the property owner can provide access within five
22 days of the receipt of the initial notice.

§37-13A-5. Cause of action for injunctive relief.

1 (a) An authorized person denied reasonable access under
2 the provisions of this article, including the denial of
3 permission to use vehicular access or the denial of permission
4 to access the cemetery or grave site to install a monument or
5 grave marker, may institute a proceeding in the circuit court
6 of the county in which the cemetery or grave site is located
7 to enjoin the owner of the private lands on which the
8 cemetery or grave site is located, or his or her agent, from
9 denying the authorized person reasonable ingress and egress
10 to the cemetery or grave site for the purposes set forth in this
11 article. In granting relief, the court may set the frequency of
12 access, hours and duration of the access.

13 (b) The court or the judge thereof may issue a preliminary
14 injunction in any case pending a decision on the merits of any
15 application filed without requiring the filing of a bond or
16 other equivalent security.



CHAPTER 20

**(H. B. 3134 - By Delegates Brown, Frazier,
Moore, Miley, Poore and Fleischauer)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend amend and reenact §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-14-408 and §48-14-410 of said code; and to amend and reenact §48-24-106 of said code, all relating to child support enforcement; lowering the accrued interest rate; requiring employers provide certain information to the Bureau for Child Support Enforcement; extending the time parties may agree to for payment of arrearages from twenty-four to sixty months; and making various technical corrections.

Be it enacted by the Legislature of West Virginia:

That §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-14-408 and §48-14-410 of said code be amended and reenacted; and

that §48-24-106 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-204. Arrearages or past due support defined.

1 “Arrearages” or “past due support” means the total of any
2 matured, unpaid installments of child support required to be
3 paid by an order entered or modified by a court of competent
4 jurisdiction, or by the order of a magistrate court of this state,
5 and shall stand, by operation of law, as a decretal judgment
6 against the obligor owing such support. The amount of
7 unpaid support shall bear interest from the date it accrued, at
8 a rate of five percent per annum, and proportionately for a
9 greater or lesser sum, or for a longer or shorter time. Except
10 as provided in rule 23 of rules of practice and procedure for
11 family law and as provided in section 1-302, a child support
12 order may not be retroactively modified so as to cancel or
13 alter accrued installments of support.

§48-1-244. Support defined.

1 “Support” means the payment of money, including
2 interest:

3 (1) For a child or spouse, ordered by a court of competent
4 jurisdiction, whether the payment is ordered in an emergency,
5 temporary, permanent or modified order, the amount of
6 unpaid support shall bear simple interest from the date it
7 accrued, at a rate of five percent per annum, and
8 proportionately for a greater or lesser sum, or for a longer or
9 shorter time;

10 (2) To third parties on behalf of a child or spouse,
11 including, but not limited to, payments to medical, dental or
12 educational providers, payments to insurers for health and
13 hospitalization insurance, payments of residential rent or
14 mortgage payments, payments on an automobile or payments
15 for day care; or

16 (3) For a mother, ordered by a court of competent
17 jurisdiction, for the necessary expenses incurred by or for the
18 mother in connection with her confinement or of other
19 expenses in connection with the pregnancy of the mother.

§48-1-302. Calculation of interest.

1 (a) Notwithstanding any other provisions of the code, if
2 an obligation to pay interest arises under this chapter, the rate
3 of interest is five percent per annum and proportionate
4 thereto for a greater or lesser sum, or for a longer or shorter
5 time. Interest awarded shall only be simple interest and
6 nothing in this section may be construed to permit awarding
7 of compound interest. Interest accrues only upon the
8 outstanding principal of such obligation.

9 (b) Notwithstanding any other provision of law, no court
10 may award or approve prejudgment interest in a domestic
11 relations action against a party unless the court finds, in
12 writing, that the party engaged in conduct that would violate
13 subsection (b), Rule 11 of the West Virginia Rules of Civil
14 Procedure. If prejudgment interest is awarded, the court shall
15 calculate prejudgment interest from the date the offending
16 representation was presented to the court pursuant to
17 subsection (a) of this section.

18 (c) Upon written agreement by both parties, an obligor
19 may petition the court to enter an order conditionally
20 suspending the collection of all or part of the interest that has
21 accrued on past-due child support prior to the date of the

22 agreement: *Provided*, That said agreement shall also establish
23 a reasonable payment plan which is calculated to fully
24 discharge all arrearages within sixty months. Upon
25 successful completion of the payment plan, the court shall
26 enter an order which permanently relieves the obligor of the
27 obligation to pay the accrued interest. If the obligor fails to
28 comply with the terms of the written agreement, then the
29 court shall enter an order which reinstates the accrued
30 interest.

31 (d) Amendments to this section enacted by the
32 Legislature during the 2006 regular session shall become
33 effective January 1, 2007.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-408. Determination of amounts to be withheld.

1 Notwithstanding any other provision of this code to the
2 contrary which provides for a limitation upon the amount
3 which may be withheld from earnings through legal process,
4 the amount of an obligor's aggregate disposable earnings for
5 any given workweek which may be withheld as support
6 payments is to be determined in accordance with the
7 provisions of this subsection, as follows:

8 (1) After ascertaining the status of the payment record of
9 the obligor under the terms of the support order, the payment
10 record shall be examined to determine whether any arrearage
11 is due for amounts which should have been paid prior to a
12 twelve-week period which ends with the workweek for which
13 withholding is sought to be enforced.

14 (2) Prior to January 1, 2001, when none of the
15 withholding is for amounts which came due prior to such
16 twelve-week period, then:

17 (A) When the obligor is supporting another spouse or
18 dependent child other than the spouse or child for whom the
19 proposed withholding is being sought, the amount withheld
20 may not exceed fifty percent of the obligor's disposable
21 earnings for that week; and

22 (B) When the obligor is not supporting another spouse or
23 dependent child as described in paragraph (A) of this
24 subdivision, the amount withheld may not exceed sixty
25 percent of the obligor's disposable earnings for that week.

26 (3) Prior to January 1, 2001, when a part of the
27 withholding is for amounts which came due prior to such
28 twelve-week period, then:

29 (A) Where the obligor is supporting another spouse or
30 dependent child other than the spouse or child for whom the
31 proposed withholding is being sought, the amount withheld
32 may not exceed fifty-five percent of the obligor's disposable
33 earnings for that week; and

34 (B) Where the obligor is not supporting another spouse
35 or dependent child as described in paragraph (A) of this
36 subdivision, the amount withheld may not exceed sixty-five
37 percent of the obligor's disposable earnings for that week.

38 (4) Beginning January 1, 2001, when none of the
39 withholding is for amounts which came due prior to such
40 twelve-week period, then:

41 (A) When the obligor is supporting another spouse or
42 dependent child other than the spouse or child for whom the
43 proposed withholding is being sought, the amount withheld
44 may not exceed forty percent of the obligor's disposable
45 earnings for that week; and

46 (B) When the obligor is not supporting another spouse or
47 dependent child as described in paragraph (A) of this

48 subdivision, the amount withheld may not exceed fifty
49 percent of the obligor's disposable earnings for that week.

50 (5) Beginning January 1, 2001, when a part of the
51 withholding is for amounts which came due prior to such
52 twelve-week period, then:

53 (A) When the obligor is supporting another spouse or
54 dependent child other than the spouse or child for whom the
55 proposed withholding is being sought, the amount withheld
56 may not exceed forty-five percent of the obligor's disposable
57 earnings for that week; and

58 (B) Where the obligor is not supporting another spouse
59 or dependent child as described in paragraph (A) of this
60 subdivision, the amount withheld may not exceed fifty-five
61 percent of the obligor's disposable earnings for that week.

62 (6) In addition to the percentage limitations set forth in
63 subdivisions (2) and (3) of this section, it shall be a further
64 limitation that when the current month's obligation plus
65 arrearages are being withheld from salaries or wages in no
66 case shall the total amounts withheld for the current month's
67 obligation plus arrearage exceed the amounts withheld for the
68 current obligation by an amount greater than twenty-five
69 percent of the current monthly support obligation.

70 (7) The provisions of this section shall apply directly to
71 the withholding of disposable earnings of an obligor
72 regardless of whether the obligor is paid on a weekly,
73 biweekly, monthly or other basis.

74 (8) The Bureau for Child Support Enforcement has the
75 authority to prorate the current support obligation in
76 accordance with the pay cycle of the source of income. This
77 prorated current support obligation shall be known as the
78 "adjusted support obligation". The current support obligation

79 or the adjusted support obligation is the amount, if unpaid, on
80 which interest will be charged.

81 (9) When an obligor acts so as to purposefully minimize
82 his or her income and to thereby circumvent the provisions of
83 part 4 of this article which provide for withholding from
84 income of amounts payable as support, the amount to be
85 withheld as support payments may be based upon the
86 obligor's potential earnings rather than his or her actual
87 earnings, and such obligor may not rely upon the percentage
88 limitations set forth in this subsection which limit the amount
89 to be withheld from disposable earnings.

90 (10) Notwithstanding any other provision of this section,
91 the Bureau for Child Support Enforcement may withhold not
92 more than fifty percent of any earnings denominated as an
93 employment-related bonus to satisfy an outstanding child
94 support arrearage.

95 (A) Two weeks prior to issuing any bonus equal to or in
96 excess of \$100 to an employee or employees, an employer
97 shall notify the Bureau for Child Support Enforcement, in a
98 manner prescribed by the bureau, of the employee or
99 employees' name, address, social security number, date of
100 birth and amount of the bonus.

101 (B) If it is determined that an employee owes an
102 arrearage, an income withholding notice shall be issued
103 pursuant to chapter forty-eight, article fourteen, to the
104 employer.

§48-14-410. Sending amounts withheld to bureau; notice.

1 After implementation in accordance with the provisions
2 of section 14-409, a source of income shall send the amount
3 to be withheld from the obligor's income to the Bureau for
4 Child Support Enforcement and shall notify the Bureau for

5 Child Support Enforcement of the date of withholding, the
6 same date that the obligor is paid. If the source of income has
7 more than fifty employees, the source of income shall submit
8 the support withheld via electronic means in a manner
9 prescribed by the Bureau for Child Support Enforcement.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-106. Establishing paternity by acknowledgment of natural father.

1 A written, notarized acknowledgment executed pursuant
2 to the provisions of section ten, article five, chapter sixteen
3 of this code legally establishes the man as the father of the
4 child for all purposes and child support may be established in
5 accordance with the support guidelines set forth in article 13-
6 101, et seq.

CHAPTER 21

**(Com Sub. for S. B. 216 - By Senators Prezioso,
Palumbo, Edgell, Foster, Kessler (Acting President),
Minard, Unger, Williams, Boley, Jenkins,
Snyder, Browning, McCabe, Stollings,
Plymale, Laird, Miller, Klempa and Nohe)**

[Passed March 7, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended, relating to modifying the definition of “imminent danger to the physical well-being of a child” with regard to child abuse and neglect to include alcohol

and substance abuse on the part of the parent, guardian or custodian.

Be it enacted by the Legislature of West Virginia:

That §49-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

1 As used in this chapter:

2 (1) “Abused child” means a child whose health or welfare
3 is harmed or threatened by:

4 (A) A parent, guardian or custodian who knowingly or
5 intentionally inflicts, attempts to inflict or knowingly allows
6 another person to inflict, physical injury or mental or emotional
7 injury, upon the child or another child in the home; or

8 (B) Sexual abuse or sexual exploitation; or

9 (C) The sale or attempted sale of a child by a parent,
10 guardian or custodian in violation of section sixteen, article
11 four, chapter forty-eight of this code; or

12 (D) Domestic violence as defined in section two hundred
13 two, article twenty-seven, chapter forty-eight of this code.

14 In addition to its broader meaning, physical injury may
15 include an injury to the child as a result of excessive corporal
16 punishment.

17 (2) “Abusing parent” means a parent, guardian or other
18 custodian, regardless of his or her age, whose conduct, as
19 alleged in the petition charging child abuse or neglect, has
20 been adjudged by the court to constitute child abuse or
21 neglect.

22 (3) “Battered parent” means a parent, guardian or other
23 custodian who has been judicially determined not to have
24 condoned the abuse or neglect and has not been able to stop
25 the abuse or neglect of the child or children due to being the
26 victim of domestic violence as defined by section two
27 hundred two, article twenty-seven, chapter forty-eight of this
28 code, which domestic violence was perpetrated by the person
29 or persons determined to have abused or neglected the child
30 or children.

31 (4) “Child abuse and neglect” or “child abuse or neglect”
32 means physical injury, mental or emotional injury, sexual
33 abuse, sexual exploitation, sale or attempted sale or negligent
34 treatment or maltreatment of a child by a parent, guardian or
35 custodian who is responsible for the child's welfare, under
36 circumstances which harm or threaten the health and welfare
37 of the child.

38 (5) “Child abuse and neglect services” means social
39 services which are directed toward:

40 (A) Protecting and promoting the welfare of children who
41 are abused or neglected;

42 (B) Identifying, preventing and remedying conditions
43 which cause child abuse and neglect;

44 (C) Preventing the unnecessary removal of children from
45 their families by identifying family problems and assisting
46 families in resolving problems which could lead to a removal
47 of children and a breakup of the family;

48 (D) In cases where children have been removed from
49 their families, providing services to the children and the
50 families so as to reunify such children with their families or
51 some portion thereof;

52 (E) Placing children in suitable adoptive homes when
53 reunifying the children with their families, or some portion
54 thereof, is not possible or appropriate; and

55 (F) Assuring the adequate care of children who have been
56 placed in the custody of the department or third parties.

57 (6) “Child advocacy center” means a community-based
58 organization that is a member in good standing with the West
59 Virginia Child Abuse Network, Inc., and is working to
60 implement the following program components:

61 (A) Child-appropriate/child-friendly facility: A child
62 advocacy center provides a comfortable, private,
63 child-friendly setting that is both physically and
64 psychologically safe for clients.

65 (B) Multidisciplinary team (MDT): A multidisciplinary
66 team for response to child abuse allegations includes
67 representation from the following: Law enforcement; child
68 protective services; prosecution; mental health; medical;
69 victim advocacy; child advocacy center.

70 (C) Organizational capacity: A designated legal entity
71 responsible for program and fiscal operations has been
72 established and implements basic sound administrative
73 practices.

74 (D) Cultural competency and diversity: The CAC
75 promotes policies, practices and procedures that are culturally
76 competent. Cultural competency is defined as the capacity to
77 function in more than one culture, requiring the ability to
78 appreciate, understand and interact with members of diverse
79 populations within the local community.

80 (E) Forensic interviews: Forensic interviews are
81 conducted in a manner which is of a neutral, fact finding
82 nature and coordinated to avoid duplicative interviewing.

83 (F) Medical evaluation: Specialized medical evaluation
84 and treatment are to be made available to CAC clients as part
85 of the team response, either at the CAC or through
86 coordination and referral with other specialized medical
87 providers.

88 (G) Therapeutic intervention: Specialized mental health
89 services are to be made available as part of the team
90 response, either at the CAC or through coordination and
91 referral with other appropriate treatment providers.

92 (H) Victim support/advocacy: Victim support and
93 advocacy are to be made available as part of the team
94 response, either at the CAC or through coordination with
95 other providers, throughout the investigation and subsequent
96 legal proceedings.

97 (I) Case review: Team discussion and information
98 sharing regarding the investigation, case status and services
99 needed by the child and family are to occur on a routine
100 basis.

101 (J) Case tracking: CACs must develop and implement a
102 system for monitoring case progress and tracking case
103 outcomes for team components: *Provided*, That a child
104 advocacy center may establish a safe exchange location for
105 children and families who have a parenting agreement or an
106 order providing for visitation or custody of the children that
107 require a safe exchange location.

108 (7) "Imminent danger to the physical well-being of the
109 child" means an emergency situation in which the welfare or
110 the life of the child is threatened. Such emergency situation
111 exists when there is reasonable cause to believe that any child
112 in the home is or has been sexually abused or sexually
113 exploited, or reasonable cause to believe that the following
114 conditions threaten the health or life of any child in the home:

115 (A) Nonaccidental trauma inflicted by a parent, guardian,
116 custodian, sibling or a babysitter or other caretaker;

117 (B) A combination of physical and other signs indicating
118 a pattern of abuse which may be medically diagnosed as
119 battered child syndrome;

120 (C) Nutritional deprivation;

121 (D) Abandonment by the parent, guardian or custodian;

122 (E) Inadequate treatment of serious illness or disease;

123 (F) Substantial emotional injury inflicted by a parent,
124 guardian or custodian;

125 (G) Sale or attempted sale of the child by the parent,
126 guardian or custodian; or

127 (H) The parent, guardian or custodian's abuse of alcohol,
128 or drugs or other controlled substance as defined in section
129 one hundred one, article one, chapter sixty-a of this code, has
130 impaired his or her parenting skills to a degree as to pose an
131 imminent risk to a child's health or safety.

132 (8) "Legal guardianship" means the permanent
133 relationship between a child and caretaker, established by
134 order of the circuit court having jurisdiction over the child,
135 pursuant to the provisions of this chapter and chapter
136 forty-eight of this code.

137 (9) "Multidisciplinary team" means a group of
138 professionals and paraprofessionals representing a variety of
139 disciplines who interact and coordinate their efforts to
140 identify, diagnose and treat specific cases of child abuse and
141 neglect. Multidisciplinary teams may include, but are not
142 limited to, medical, educational, child care and
143 law-enforcement personnel, social workers, psychologists
144 and psychiatrists. Their goal is to pool their respective skills
145 in order to formulate accurate diagnoses and to provide
146 comprehensive coordinated treatment with continuity and
147 follow-up for both parents and children. "Community team"
148 means a multidisciplinary group which addresses the general
149 problem of child abuse and neglect in a given community and
150 may consist of several multidisciplinary teams with different
151 functions.

152 (10) (A) "Neglected child" means a child:

153 (i) Whose physical or mental health is harmed or
154 threatened by a present refusal, failure or inability of the
155 child's parent, guardian or custodian to supply the child with
156 necessary food, clothing, shelter, supervision, medical care
157 or education, when such refusal, failure or inability is not due
158 primarily to a lack of financial means on the part of the
159 parent, guardian or custodian; or

160 (ii) Who is presently without necessary food, clothing,
161 shelter, medical care, education or supervision because of the
162 disappearance or absence of the child's parent or custodian;

163 (B) "Neglected child" does not mean a child whose
164 education is conducted within the provisions of section one,
165 article eight, chapter eighteen of this code.

166 (11) "Parent" means an individual defined as a parent by
167 law or on the basis of a biological relationship, marriage to a
168 person with a biological relationship, legal adoption or other
169 recognized grounds.

170 (12) "Parental rights" means any and all rights and duties
171 regarding a parent to a minor child, including, but not limited
172 to, custodial rights and visitational rights and rights to
173 participate in the decisions affecting a minor child.

174 (13) "Parenting skills" means a parent's competencies in
175 providing physical care, protection, supervision and
176 psychological support appropriate to a child's age and state
177 of development.

178 (14) "Sexual abuse" means:

179 (A) As to a child who is less than sixteen years of age,
180 any of the following acts which a parent, guardian or
181 custodian shall engage in, attempt to engage in, or knowingly
182 procure another person to engage in, with such child,
183 notwithstanding the fact that the child may have willingly
184 participated in such conduct or the fact that the child may

185 have suffered no apparent physical injury or mental or
186 emotional injury as a result of such conduct:

187 (i) Sexual intercourse;

188 (ii) Sexual intrusion; or

189 (iii) Sexual contact;

190 (B) As to a child who is sixteen years of age or older, any
191 of the following acts which a parent, guardian or custodian
192 shall engage in, attempt to engage in, or knowingly procure
193 another person to engage in, with such child, notwithstanding
194 the fact that the child may have consented to such conduct or
195 the fact that the child may have suffered no apparent physical
196 injury or mental or emotional injury as a result of such
197 conduct:

198 (i) Sexual intercourse;

199 (ii) Sexual intrusion; or

200 (iii) Sexual contact.

201 (C) Any conduct whereby a parent, guardian or custodian
202 displays his or her sex organs to a child, or procures another
203 person to display his or her sex organs to a child, for the
204 purpose of gratifying the sexual desire of the parent, guardian
205 or custodian, of the person making such display, or of the
206 child, or for the purpose of affronting or alarming the child.

207 (15) "Sexual contact" means sexual contact as that term
208 is defined in section one, article eight-b, chapter sixty-one of
209 this code.

210 (16) "Sexual exploitation" means an act whereby:

211 (A) A parent, custodian or guardian, whether for financial
212 gain or not, persuades, induces, entices or coerces a child to

213 engage in sexually explicit conduct as that term is defined in
214 section one, article eight-c, chapter sixty-one of this code; or

215 (B) A parent, guardian or custodian persuades, induces,
216 entices or coerces a child to display his or her sex organs for
217 the sexual gratification of the parent, guardian, custodian or
218 a third person, or to display his or her sex organs under
219 circumstances in which the parent, guardian or custodian
220 knows such display is likely to be observed by others who
221 would be affronted or alarmed.

222 (17) "Sexual intercourse" means sexual intercourse as
223 that term is defined in section one, article eight-b, chapter
224 sixty-one of this code.

225 (18) "Sexual intrusion" means sexual intrusion as that
226 term is defined in section one, article eight-b, chapter
227 sixty-one of this code.

228 (19) "Placement" means any temporary or permanent
229 placement of a child who is in the custody of the state in any
230 foster home, group home or other facility or residence.

231 (20) "Serious physical abuse" means bodily injury which
232 creates a substantial risk of death, which causes serious or
233 prolonged disfigurement, prolonged impairment of health or
234 prolonged loss or impairment of the function of any bodily
235 organ.

236 (21) "Siblings" means children who have at least one
237 biological parent in common or who have been legally
238 adopted by the same parents or parent.

239 (22) "Time-limited reunification services" means
240 individual, group and family counseling, inpatient, residential
241 or outpatient substance abuse treatment services, mental
242 health services, assistance to address domestic violence,
243 services designed to provide temporary child care and
244 therapeutic services for families, including crisis nurseries
245 and transportation to or from any such services, provided

246 during fifteen of the most recent twenty-two months a child
247 has been in foster care, as determined by the earlier date of
248 the first judicial finding that the child is subjected to abuse or
249 neglect, or the date which is sixty days after the child is
250 removed from home.



CHAPTER 22

**(Com Sub. for H. B. 2750 - By Delegates Frazier,
Mahan, Fleischauer, Caputo, Moore, Hunt and Skaff)**

[Passed March 9, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §49-6-3 and §49-6-5 of the Code of West Virginia, 1931, as amended, all relating to making the commission of sexual assault or sexual abuse against certain persons a basis for denying someone temporary or permanent custody of a minor child or children.

Be it enacted by the Legislature of West Virginia:

That §49-6-3 and §49-6-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-3. Petition to court when child believed neglected or abused -- Temporary custody.

1 (a) Upon the filing of a petition, the court may order that
2 the child alleged to be an abused or neglected child be

3 delivered for not more than ten days into the custody of the
4 state department or a responsible person found by the court
5 to be a fit and proper person for the temporary care of the
6 child pending a preliminary hearing, if it finds that:

7 (1) There exists imminent danger to the physical well-
8 being of the child; and

9 (2) There are no reasonably available alternatives to
10 removal of the child, including, but not limited to, the
11 provision of medical, psychiatric, psychological or
12 homemaking services in the child's present custody:
13 *Provided*, That where the alleged abusing person, if known,
14 is a member of a household, the court shall not allow
15 placement pursuant to this section of the child or children in
16 said home unless the alleged abusing person is or has been
17 precluded from visiting or residing in said home by judicial
18 order. In a case where there is more than one child in the
19 home, or in the temporary care, custody or control of the
20 alleged offending parent, the petition shall so state, and
21 notwithstanding the fact that the allegations of abuse or
22 neglect may pertain to less than all of such children, each
23 child in the home for whom relief is sought shall be made a
24 party to the proceeding. Even though the acts of abuse or
25 neglect alleged in the petition were not directed against a
26 specific child who is named in the petition, the court shall
27 order the removal of such child, pending final disposition, if
28 it finds that there exists imminent danger to the physical well-
29 being of the child and a lack of reasonable available
30 alternatives to removal. The initial order directing such
31 custody shall contain an order appointing counsel and
32 scheduling the preliminary hearing, and upon its service shall
33 require the immediate transfer of custody of such child or
34 children to the department or a responsible relative which
35 may include any parent, guardian, or other custodian. The
36 court order shall state:

37 (A) That continuation in the home is contrary to the best
38 interests of the child and why; and

39 (B) Whether or not the department made reasonable
40 efforts to preserve the family and prevent the placement or
41 that the emergency situation made such efforts unreasonable
42 or impossible. The order may also direct any party or the
43 department to initiate or become involved in services to
44 facilitate reunification of the family.

45 (b) Whether or not the court orders immediate transfer of
46 custody as provided in subsection (a) of this section, if the
47 facts alleged in the petition demonstrate to the court that there
48 exists imminent danger to the child, the court may schedule
49 a preliminary hearing giving the respondents at least five
50 days' actual notice. If the court finds at the preliminary
51 hearing that there are no alternatives less drastic than removal
52 of the child and that a hearing on the petition cannot be
53 scheduled in the interim period, the court may order that the
54 child be delivered into the temporary custody of the
55 department or a responsible person or agency found by the
56 court to be a fit and proper person for the temporary care of
57 the child for a period not exceeding sixty days: *Provided,*
58 That the court order shall state:

59 (1) That continuation in the home is contrary to the best
60 interests of the child and set forth the reasons therefor;

61 (2) whether or not the department made reasonable
62 efforts to preserve the family and to prevent the child's
63 removal from his or her home;

64 (3) Whether or not the department made reasonable
65 efforts to preserve the family and to prevent the placement or
66 that the emergency situation made such efforts unreasonable
67 or impossible; and

68 (4) What efforts should be made by the department, if
69 any, to facilitate the child's return home: *Provided, however,*
70 That if the court grants an improvement period as provided
71 in section twelve of this article, the sixty-day limit upon
72 temporary custody is waived.

73 (c) If a child or children shall, in the presence of a child
74 protective service worker, be in an emergency situation
75 which constitutes an imminent danger to the physical well-
76 being of the child or children, as that phrase is defined in
77 section three, article one of this chapter, and if such worker
78 has probable cause to believe that the child or children will
79 suffer additional child abuse or neglect or will be removed
80 from the county before a petition can be filed and temporary
81 custody can be ordered, the worker may, prior to the filing of
82 a petition, take the child or children into his or her custody
83 without a court order: *Provided,* That after taking custody of
84 such child or children prior to the filing of a petition, the
85 worker shall forthwith appear before a circuit judge or a
86 juvenile referee of the county wherein custody was taken, or
87 if no such judge or referee be available, before a circuit judge
88 or a juvenile referee of an adjoining county, and shall
89 immediately apply for an order ratifying the emergency
90 custody of the child pending the filing of a petition. The
91 circuit court of every county in the state shall appoint at least
92 one of the magistrates of the county to act as a juvenile
93 referee, who shall serve at the will and pleasure of the
94 appointing court, and who shall perform the functions
95 prescribed for such position by the provisions of this
96 subsection. The parents, guardians or custodians of the child
97 or children may be present at the time and place of
98 application for an order ratifying custody, and if at the time
99 the child or children are taken into custody by the worker, the
100 worker knows which judge or referee is to receive the
101 application, the worker shall so inform the parents, guardians
102 or custodians. The application for emergency custody may
103 be on forms prescribed by the Supreme Court of Appeals or

104 prepared by the prosecuting attorney or the applicant, and
105 shall set forth facts from which it may be determined that the
106 probable cause described above in this subsection exists.
107 Upon such sworn testimony or other evidence as the judge or
108 referee deems sufficient, the judge or referee may order the
109 emergency taking by the worker to be ratified. If appropriate
110 under the circumstances, the order may include authorization
111 for an examination as provided for in subsection (b), section
112 four of this article. If a referee issues such an order, the
113 referee shall by telephonic communication have such order
114 orally confirmed by a circuit judge of the circuit or an
115 adjoining circuit who shall on the next judicial day enter an
116 order of confirmation. If the emergency taking is ratified by
117 the judge or referee, emergency custody of the child or
118 children shall be vested in the department until the expiration
119 of the next two judicial days, at which time any such child
120 taken into emergency custody shall be returned to the custody
121 of his or her parent or guardian or custodian unless a petition
122 has been filed and custody of the child has been transferred
123 under the provisions of section three of this article.

124 (d) For purposes of the court's consideration of
125 temporary custody pursuant to the provisions of subsection
126 (a) or (b) of this section, the department is not required to
127 make reasonable efforts to preserve the family if the court
128 determines:

129 (1) The parent has subjected the child, another child of
130 the parent, or any other child residing in the same household
131 or under the temporary or permanent custody of the parent to
132 aggravated circumstances which include, but are not limited to,
133 to, abandonment, torture, chronic abuse and sexual abuse;

134 (2) The parent has:

135 (A) Committed murder of the child's other parent,
136 guardian or custodian, another child of the parent, or any

137 other child residing in the same household or under the
138 temporary or permanent custody of the parent;

139 (B) Committed voluntary manslaughter of the child's
140 other parent, guardian or custodian, another child of the
141 parent, or any other child residing in the same household or
142 under the temporary or permanent custody of the parent;

143 (C) Attempted or conspired to commit such a murder or
144 voluntary manslaughter or been an accessory before or after
145 the fact to either such crime;

146 (D) Committed unlawful or malicious wounding that
147 results in serious bodily injury to the child, the child's other
148 parent, guardian or custodian, to another child of the parent,
149 or any other child residing in the same household or under
150 the temporary or permanent custody of the parent; or

151 (E) Committed sexual assault or sexual abuse of the
152 child, the child's other parent, guardian, or custodian, another
153 child of the parent, or any other child residing in the same
154 household or under the temporary or permanent custody of
155 the parent.

156 (3) The parental rights of the parent to another child have
157 been terminated involuntarily.

§49-6-5. Disposition of neglected or abused children.

1 (a) Following a determination pursuant to section two of
2 this article wherein the court finds a child to be abused or
3 neglected, the department shall file with the court a copy of
4 the child's case plan, including the permanency plan for the
5 child. The term case plan means a written document that
6 includes, where applicable, the requirements of the family
7 case plan as provided for in section three, article six-d of this
8 chapter and that also includes at least the following: A
9 description of the type of home or institution in which the

10 child is to be placed, including a discussion of the
11 appropriateness of the placement and how the agency which
12 is responsible for the child plans to assure that the child
13 receives proper care and that services are provided to the
14 parents, child and foster parents in order to improve the
15 conditions in the parent(s) home; facilitate return of the child
16 to his or her own home or the permanent placement of the
17 child; and address the needs of the child while in foster care,
18 including a discussion of the appropriateness of the services
19 that have been provided to the child. The term “permanency
20 plan” refers to that part of the case plan which is designed to
21 achieve a permanent home for the child in the least restrictive
22 setting available. The plan must document efforts to ensure
23 that the child is returned home within approximate time lines
24 for reunification as set out in the plan. Reasonable efforts to
25 place a child for adoption or with a legal guardian may be
26 made at the same time reasonable efforts are made to prevent
27 removal or to make it possible for a child to safely return
28 home. If reunification is not the permanency plan for the
29 child, the plan must state why reunification is not appropriate
30 and detail the alternative placement for the child to include
31 approximate time lines for when such placement is expected
32 to become a permanent placement. This case plan shall serve
33 as the family case plan for parents of abused or neglected
34 children. Copies of the child’s case plan shall be sent to the
35 child’s attorney and parent, guardian or custodian or their
36 counsel at least five days prior to the dispositional hearing.
37 The court shall forthwith proceed to disposition giving both
38 the petitioner and respondents an opportunity to be heard.
39 The court shall give precedence to dispositions in the
40 following sequence:

41 (1) Dismiss the petition;

42 (2) Refer the child, the abusing parent, the battered parent
43 or other family members to a community agency for needed
44 assistance and dismiss the petition;

45 (3) Return the child to his or her own home under
46 supervision of the department;

47 (4) Order terms of supervision calculated to assist the
48 child and any abusing parent or battered parent or parents or
49 custodian which prescribe the manner of supervision and care
50 of the child and which are within the ability of any parent or
51 parents or custodian to perform;

52 (5) Upon a finding that the abusing parent or battered
53 parent or parents are presently unwilling or unable to provide
54 adequately for the child's needs, commit the child
55 temporarily to the custody of the state department, a licensed
56 private child welfare agency or a suitable person who may be
57 appointed guardian by the court. The court order shall state:

58 (A) That continuation in the home is contrary to the best
59 interests of the child and why;

60 (B) Whether or not the department has made reasonable
61 efforts, with the child's health and safety being the
62 paramount concern, to preserve the family, or some portion
63 thereof, and to prevent or eliminate the need for removing the
64 child from the child's home and to make it possible for the
65 child to safely return home;

66 (C) What efforts were made or that the emergency
67 situation made such efforts unreasonable or impossible; and

68 (D) The specific circumstances of the situation which
69 made such efforts unreasonable if services were not offered
70 by the department. The court order shall also determine under
71 what circumstances the child's commitment to the
72 department shall continue. Considerations pertinent to the
73 determination include whether the child should:

74 (i) Be continued in foster care for a specified period;

75 (ii) Be considered for adoption;

76 (iii) Be considered for legal guardianship;

77 (iv) Be considered for permanent placement with a fit and
78 willing relative; or

79 (v) Be placed in another planned permanent living
80 arrangement, but only in cases where the department has
81 documented to the circuit court a compelling reason for
82 determining that it would not be in the best interests of the
83 child to follow one of the options set forth in subparagraphs
84 (i), (ii), (iii) or (iv) of this paragraph. The court may order
85 services to meet the special needs of the child. Whenever the
86 court transfers custody of a youth to the department, an
87 appropriate order of financial support by the parents or
88 guardians shall be entered in accordance with section five,
89 article seven of this chapter; or

90 (6) Upon a finding that there is no reasonable likelihood
91 that the conditions of neglect or abuse can be substantially
92 corrected in the near future and, when necessary for the
93 welfare of the child, terminate the parental, custodial and
94 guardianship rights and responsibilities of the abusing parent
95 and commit the child to the permanent sole custody of the
96 nonabusing parent, if there be one, or, if not, to either the
97 permanent guardianship of the department or a licensed child
98 welfare agency. The court may award sole custody of the
99 child to a nonabusing battered parent. If the court shall so
100 find, then in fixing its dispositional order the court shall
101 consider the following factors:

102 (A) The child's need for continuity of care and
103 caretakers;

104 (B) The amount of time required for the child to be
105 integrated into a stable and permanent home environment;
106 and

107 (C) Other factors as the court considers necessary and
108 proper. Notwithstanding any other provision of this article,
109 the court shall give consideration to the wishes of a child
110 fourteen years of age or older or otherwise of an age of
111 discretion as determined by the court regarding the
112 permanent termination of parental rights. No adoption of a
113 child shall take place until all proceedings for termination of
114 parental rights under this article and appeals thereof are final.
115 In determining whether or not parental rights should be
116 terminated, the court shall consider the efforts made by the
117 department to provide remedial and reunification services to
118 the parent. The court order shall state:

119 (i) That continuation in the home is not in the best
120 interest of the child and why;

121 (ii) Why reunification is not in the best interests of the
122 child;

123 (iii) Whether or not the department made reasonable
124 efforts, with the child's health and safety being the
125 paramount concern, to preserve the family, or some portion
126 thereof, and to prevent the placement or to eliminate the need
127 for removing the child from the child's home and to make it
128 possible for the child to safely return home, or that the
129 emergency situation made such efforts unreasonable or
130 impossible; and

131 (iv) Whether or not the department made reasonable
132 efforts to preserve and reunify the family, or some portion
133 thereof, including a description of what efforts were made or
134 that such efforts were unreasonable due to specific
135 circumstances.

136 (7) For purposes of the court's consideration of the
137 disposition custody of a child pursuant to the provisions of
138 this subsection, the department is not required to make

139 reasonable efforts to preserve the family if the court
140 determines:

141 (A) The parent has subjected the child, another child of
142 the parent, or any other child residing in the same household
143 or under the temporary or permanent custody of the parent to
144 aggravated circumstances which include, but are not limited to,
145 to, abandonment, torture, chronic abuse and sexual abuse;

146 (B) The parent has:

147 (i) Committed murder of the child's other parent,
148 guardian or custodian, another child of the parent or any
149 other child residing in the same household or under the
150 temporary or permanent custody of the parent;

151 (ii) Committed voluntary manslaughter of the child's
152 other parent, guardian or custodian, another child of the
153 parent, or any other child residing in the same household or
154 under the temporary or permanent custody of the parent;

155 (iii) Attempted or conspired to commit such a murder or
156 voluntary manslaughter or been an accessory before or after
157 the fact to either such crime;

158 (iv) Committed a felonious assault that results in serious
159 bodily injury to the child, the child's other parent, guardian
160 or custodian, to another child of the parent, or any other child
161 residing in the same household or under the temporary or
162 permanent custody of the parent; or

163 (v) Committed sexual assault or sexual abuse of the child,
164 the child's other parent, guardian, or custodian, another child
165 of the parent, or any other child residing in the same
166 household or under the temporary or permanent custody of
167 the parent.

168 (C) The parental rights of the parent to another child have
169 been terminated involuntarily.

170 (b) As used in this section, “no reasonable likelihood that
171 conditions of neglect or abuse can be substantially corrected”
172 shall mean that, based upon the evidence before the court, the
173 abusing adult or adults have demonstrated an inadequate
174 capacity to solve the problems of abuse or neglect on their
175 own or with help. Such conditions shall be considered to
176 exist in the following circumstances, which shall not be
177 exclusive:

178 (1) The abusing parent or parents have habitually abused
179 or are addicted to alcohol, controlled substances or drugs, to
180 the extent that proper parenting skills have been seriously
181 impaired and such person or persons have not responded to
182 or followed through the recommended and appropriate
183 treatment which could have improved the capacity for
184 adequate parental functioning;

185 (2) The abusing parent or parents have willfully refused
186 or are presently unwilling to cooperate in the development of
187 a reasonable family case plan designed to lead to the child’s
188 return to their care, custody and control;

189 (3) The abusing parent or parents have not responded to
190 or followed through with a reasonable family case plan or
191 other rehabilitative efforts of social, medical, mental health
192 or other rehabilitative agencies designed to reduce or prevent
193 the abuse or neglect of the child, as evidenced by the
194 continuation or insubstantial diminution of conditions which
195 threatened the health, welfare or life of the child;

196 (4) The abusing parent or parents have abandoned the
197 child;

198 (5) The abusing parent or parents have repeatedly or
199 seriously injured the child physically or emotionally, or have
200 sexually abused or sexually exploited the child, and the
201 degree of family stress and the potential for further abuse and
202 neglect are so great as to preclude the use of resources to
203 mitigate or resolve family problems or assist the abusing
204 parent or parents in fulfilling their responsibilities to the
205 child;

206 (6) The abusing parent or parents have incurred
207 emotional illness, mental illness or mental deficiency of such
208 duration or nature as to render such parent or parents
209 incapable of exercising proper parenting skills or sufficiently
210 improving the adequacy of such skills; or

211 (7) The battered parent's parenting skills have been
212 seriously impaired and said person has willfully refused or is
213 presently unwilling or unable to cooperate in the
214 development of a reasonable treatment plan or has not
215 adequately responded to or followed through with the
216 recommended and appropriate treatment plan.

217 (c) The court may, as an alternative disposition, allow the
218 parents or custodians an improvement period not to exceed
219 six months. During this period the court shall require the
220 parent to rectify the conditions upon which the determination
221 was based. The court may order the child to be placed with
222 the parents, or any person found to be a fit and proper person,
223 for the temporary care of the child during the period. At the
224 end of the period, the court shall hold a hearing to determine
225 whether the conditions have been adequately improved and
226 at the conclusion of the hearing shall make a further
227 dispositional order in accordance with this section.

CHAPTER 23

**(Com. Sub. for H. B. 3064 - By Delegates
Marshall, Iaquinta, Manchin, Stowers,
Evans and Anderson)**

[Passed March 9, 2011; in effect from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Attorney General; Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources/Bureau for Public Health; Division of Corrections; Division of Highways; Educational Broadcasting Authority; Public Service Commission; Regional Jail and Correctional Facility Authority and the State Tax Department to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the Court of Claims
3 concerning various claims against the state and agencies
4 thereof and in respect to each of the following claims, the

5 Legislature adopts those findings of fact as its own and in
 6 respect of certain claims herein, the Legislature has
 7 independently made findings of fact and determinations of
 8 award and hereby declares it to be the moral obligation of the
 9 state to pay each such claim in the amount specified below
 10 and directs the Auditor to issue warrants for the payment
 11 thereof out of any fund appropriated and available for the
 12 purpose.

13 (a) *Claim against the Attorney General's Office:*

14 (TO BE PAID FROM GENERAL REVENUE FUND)

15 (1) Angela Walters... \$2,740.00

16 (b) *Claims against the Department of Environmental*
 17 *Protection:*

18 (TO BE PAID FROM SPECIAL REVENUE FUND)

19 (1) George V. Piper. \$180.00

20 (c) *Claim against the Department of Health and Human*
 21 *Resources:*

22 (TO BE PAID FROM SPECIAL REVENUE FUND)

23 (1) Charleston Area Medical Center. \$478.29

24 (d) *Claim against the Department of Health and Human*
 25 *Resources/Bureau for Public Health:*

26 (TO BE PAID FROM SPECIAL REVENUE FUND)

27 (1) National Medical Services Inc. \$28,664.28

28 (2) Verizon Network Integration Corp.. . . . \$14,766.66

29 (e) *Claims against the Division of Corrections:*

30 (TO BE PAID FROM GENERAL REVENUE FUND)

31	(1) Luther C. Basham.....	\$145.41
32	(2) Christopher Blackwell.....	\$314.99
33	(3) Richard Bradley.....	\$26.80
34	(4) Elmer Castle.....	\$28.95
35	(5) Merle Casto.....	\$21.85
36	(6) Robert Copen.....	\$16.88
37	(7) Robert Counts.....	\$26.85
38	(8) Steve Davey.....	\$41.90
39	(9) James R. Davis.....	\$22.80
40	(10) Sammy Davis Sr.....	\$16.90
41	(11) Scott Dean.....	\$16.85
42	(12) Larry Evans.....	\$729.88
43	(13) Warren D. Franklin.....	\$37.85
44	(14) Dave Horn.....	\$13.30
45	(15) Bruce E. Hutchinson.....	\$16.90
46	(16) Anthony Kendrick.....	\$6.93
47	(17) Rodger D. Mitchell.....	\$26.80
48	(18) Brian Morgan.....	\$18.00
49	(19) Michael Motto.....	\$44.55
50	(20) Scott Phelps.....	\$13.90
51	(21) Bobby Roddy.....	\$36.45
52	(22) Roger Rowe.....	\$20.90
53	(23) Harrison Shaffer.....	\$18.85
54	(24) James Sigley.....	\$61.50
55	(25) Donald Smith.....	\$12.90
56	(26) Chris Stout.....	\$26.85
57	(27) Randall White.....	\$15.29
58	(28) Workforce WV, Unemployment	
59	Compensation.....	\$3,294.00
60	(29) WV Regional Jail and Correctional	
61	Facility Authority.....	\$5,949,143.90
62	(30) Denver Youngblood.....	\$64.70

63 (f) *Claims against the Division of Highways:*

64 (TO BE PAID FROM STATE ROAD FUND)

65	(1) Richard Abel.	\$112.36
66	(2) Melinda Achhammer.	\$54.56
67	(3) Jason Adkins.	\$743.57
68	(4) Roger Adkins and Linda Adkins.	\$547.52
69	(5) Edith Adkins-Ross and Kelly Coyle.	\$485.83
70	(6) Judith Allen.	\$1,000.00
71	(7) Linda Allman.	\$500.00
72	(8) Jeffery W. Alpaugh.	\$561.58
73	(9) Martha Angel.	\$93.81
74	(10) Phillip Arabia and Margaret Arabia.	\$620.00
75	(11) Darryl Armentrout.	\$104.94
76	(12) Dexter E. Asbury and Esther K. Asbury.	\$500.00
77	(13) Richard C. Atencio.	\$74.85
78	(14) Phillip Atkinson.	\$96.01
79	(15) Harry Ayers.	\$178.00
80	(16) Edwin Bailey.	\$93.27
81	(17) Melissa R. Bailey and Shawn L. Bailey.	\$100.00
82	(18) Melody Bailey.	\$359.34
83	(19) Shannon Baldwin.	\$300.00
84	(20) Charyl Barker.	\$500.00
85	(21) Alma Barnard.	\$160.18
86	(22) Alan Barnes.	\$378.92
87	(23) Dorothy Barnett.	\$290.00
88	(24) Rebecca S. Bashaw.	\$215.27
89	(25) Monica Bayles and Billy Joe Bayles.	\$50.00
90	(26) Jennifer Bays.	\$1,978.55
91	(27) Jeremy Bean.	\$189.98
92	(28) Brian Beckett.	\$280.88
93	(29) William Belcher.	\$356.00
94	(30) Jeanette Beller.	\$500.00
95	(31) Joyce Berletch.	\$386.45
96	(32) Adam Berry and Teresa Caserta.	\$107.36
97	(33) Joyce Bingham and Anthony Lupton.	\$250.00

98	(34) Diane Bittinger.....	\$172.61
99	(35) Chantel J. Black.....	\$500.00
100	(36) Timothy C. Black and Dixie Jane Black. .	\$140.98
101	(37) Vickie L. Black.....	\$431.00
102	(38) William H. Black.....	\$641.15
103	(39) James Blevins.....	\$110.69
104	(40) Allen Bly.....	\$292.56
105	(41) Sheila F. Bokkon and Robert G. Bokkon..	\$98.58
106	(42) Denise Boley.....	\$100.00
107	(43) Eddie J. Bonnett II.....	\$408.98
108	(44) John L. Booker.....	\$156.92
109	(45) Chanelle Booth and James Booth.....	\$476.96
110	(46) William Booth.....	\$100.00
111	(47) David Boothe.....	\$400.00
112	(48) Fred Bostic.....	\$185.83
113	(49) Brittany Bowens.....	\$190.00
114	(50) Michael Bower.....	\$500.00
115	(51) Laura Bowles.....	\$226.77
116	(52) Peggy H. Branham and	
117	Howard Branham.....	\$491.84
118	(53) Herbert Britton-Perdomo.....	\$157.59
119	(54) Albert Brooks and Julie Brooks.....	\$500.00
120	(55) Brodis R. Brown.....	\$500.00
121	(56) Cheryl Brown.....	\$215.18
122	(57) Ginger Brown.....	\$135.90
123	(58) Roma L. Brown.....	\$227.62
124	(59) Hillary Bruer.....	\$1,016.52
125	(60) Tanya Burns and Samuel Burns.....	\$148.00
126	(61) Herman Byler.....	\$100.00
127	(62) Peggy Cadle.....	\$300.00
128	(63) Rex E. Carey.....	\$500.00
129	(64) Cassville United Methodist Church.....	\$200.00
130	(65) Thurman Casto and Jeanie Casto.....	\$250.00
131	(66) Martha Caston.....	\$289.17
132	(67) Beth Anne Cebula.....	\$464.76
133	(68) Melissa S. Chapman.....	\$500.00
134	(69) Timothy Chapman.....	\$357.61

135	(70) Dan Chilko.	\$178.48
136	(71) Victor Christian.	\$50.00
137	(72) Ellis Clagg.	\$174.28
138	(73) Sharon C. Clark.	\$226.49
139	(74) Robert Cleary.	\$138.78
140	(75) David Cline.	\$250.00
141	(76) Steven D. Clower.	\$222.60
142	(77) Ransford Cobb.	\$337.80
143	(78) Barbara Cole.	\$155.00
144	(79) James Cole.	\$474.99
145	(80) Jeffery W. Collins.	\$250.00
146	(81) Harvey H. Collins II.	\$500.00
147	(82) Warren L. Compton and	
148	Judith A. Compton.	\$339.20
149	(83) Jamie L. Conley and	
150	Tracy Ann Conley.	\$500.00
151	(84) Dana Cook.	\$254.35
152	(85) Scott Cook.	\$316.00
153	(86) Karen Sue Cooper.	\$253.59
154	(87) Joseph E. Copenhaver Sr.	\$1,000.00
155	(88) Richard G. Cordwell and	
156	Kimberly A. Cordwell.	\$500.00
157	(89) Teresa Counts.	\$90.10
158	(90) Bill Cox.	\$8,200.00
159	(91) Robin Cox and Phillip Cox.	\$476.68
160	(92) Rosie Crites.	\$139.55
161	(93) Sherry L. Crouch.	\$82.63
162	(94) Bernidene Culp.	\$153.68
163	(95) Gary Cummings and Connie Cummings.	\$80.75
164	(96) Cherith Cunningham.	\$200.00
165	(97) Michael Cunningham.	\$250.00
166	(98) Jennie Welch Curry and	
167	Encove Management Co. Inc.	\$1,734.13
168	(99) Michelle Cyrus.	\$237.33
169	(100) Russell Allen Dake.	\$153.13
170	(101) Kristi Daniels.	\$143.93
171	(102) Amber Davis.	\$537.00

172	(103) Billy M. Davis and Elnora Davis.	\$500.00
173	(104) Rose Davis.	\$433.30
174	(105) Terry Davis.	\$244.01
175	(106) Angela DeMoss.	\$432.69
176	(107) Anthony Dickens.	\$396.86
177	(108) Timothy Dingess.	\$500.00
178	(109) Lawrence Dixon.	\$63.60
179	(110) Nichole Dolan.	\$268.68
180	(111) Christy Dominquez.	\$37.10
181	(112) Daniel W. Dowdy and Julie B. Bolyard. . .	\$86.39
182	(113) David Duffield.	\$135.68
183	(114) David Carl Dunkle.	\$649.60
184	(115) William Durham.	\$546.37
185	(116) Kimberly Durkin.	\$208.70
186	(117) Kenneth Dutchess and	
187	Elizabeth Dutchess.	\$1,000.00
188	(118) Teresa Eagle and Stephen Eagle.	\$374.12
189	(119) David G. Ellis.	\$286.51
190	(120) Margaret M. Ellis and Gregory H. Ellis. . .	\$84.77
191	(121) Lisa R. Ellis.	\$477.00
192	(122) Randall Estep.	\$238.56
193	(123) Dorma Fields.	\$201.59
194	(124) Norma Fields.	\$1,000.00
195	(125) Cindy J. Files.	\$169.00
196	(126) Gerhard Fischer and Dora M. Fischer. . .	\$331.25
197	(127) Richard W. Fisher.	\$367.10
198	(128) Robert Eric Fisher.	\$85.00
199	(129) Heather Fleischman.	\$178.84
200	(130) Timothy Mark Fowler.	\$260.00
201	(131) Melissa Fox.	\$351.78
202	(132) Raymond Frankhouser.	\$93.76
203	(133) Regina Fugate.	\$150.45
204	(134) Michelle A. Gabbert and	
205	Steven C. Gabbert.	\$500.00
206	(135) Dale L. Gandee and Loretta L. Gandee. . .	\$420.32
207	(136) Carroll D. Garnes Jr.	\$549.19
208	(137) Andy Garrett.	\$1,540.00

209	(138) Gauley River Fire Department.	\$500.00
210	(139) Mary Gifford.	\$88.50
211	(140) Traci Gillispie.	\$476.78
212	(141) Lisa Gloyd.	\$396.95
213	(142) Darrell Gossage.	\$435.66
214	(143) Stacey T. Grange.	\$3,114.49
215	(144) Nicholas A. Graphery Jr.	\$551.20
216	(145) Christina Green.	\$112.36
217	(146) Dean A. Greer.	\$383.61
218	(147) Barbara L. Grimmett.	\$255.03
219	(148) Susan Guinther.	\$500.00
220	(149) Samantha Gump and Corey Blizard.	\$168.39
221	(150) Debbie Hadlock and Rebecca Newell. . .	\$146.09
222	(151) James Robert Hairston.	\$194.83
223	(152) Scott Hall.	\$500.00
224	(153) Luella M. Halstead and	
225	Theodore R. Halstead.	\$101.76
226	(154) Joyce G. Hamilton and	
227	John R. Hamilton.	\$500.00
228	(155) William Hardiman and	
229	Donna Hardiman.	\$414.42
230	(156) Jane Hardman.	\$619.00
231	(157) David Hardy.	\$1,000.00
232	(158) Robin Harmon.	\$761.08
233	(159) Wendy L. Harris.	\$300.00
234	(160) David Hart.	\$344.50
235	(161) Jessamy Hartman and	
236	Thomas P. Hartman II.	\$428.88
237	(162) Darlene F. Hatfield and	
238	Douglas D. Hatfield.	\$727.67
239	(163) Bruce F. Haupt.	\$500.00
240	(164) Larry J. Hayes.	\$317.95
241	(165) Sharon Hayes.	\$100.00
242	(166) Ronald Hazelwood.	\$324.83
243	(167) Ronald Helms.	\$240.60
244	(168) Krystal Helton.	\$770.66
245	(169) Karen Henson.	\$113.93

246	(170) Larry Hertzog.....	\$127.00
247	(171) Catherine Hickman.....	\$90.00
248	(172) Christopher Hicks.....	\$280.84
249	(173) Mary Sue Hildreth and	
250	Angela Beagle.	\$360.11
251	(174) Dottie Hill.....	\$67.84
252	(175) Leana Hogbin.....	\$440.00
253	(176) Denise Hoke.....	\$425.92
254	(177) Lanny Holbert.	\$128.26
255	(178) Cassandra Holliday.	\$180.20
256	(179) Constance Holliday.	\$273.40
257	(180) Mildred Holt.....	\$20.00
258	(181) Kaliegh Hughes and Mary Gashie.	\$286.32
259	(182) Kelly D. Hughes and	
260	Walter S. Hughes.....	\$425.00
261	(183) Melanie Hummel and David Hummel....	\$208.82
262	(184) Sandra Hurst.....	\$108.17
263	(185) Jason Hyett.....	\$460.47
264	(186) Gina Irwin.	\$264.95
265	(187) Matthew Jackson.	\$230.91
266	(188) Carol James.	\$344.50
267	(189) Jewell Rebecca Jarrell and	
268	Dennis Jarrell.	\$500.00
269	(190) Kathy Jarrell.....	\$250.00
270	(191) Donna Jefferson and	
271	Richard Jefferson.....	\$230.02
272	(192) Linda Jenkins.	\$180.20
273	(193) James John.	\$306.49
274	(194) Cornelious Jones.	\$500.00
275	(195) Johnnie Jones.	\$274.50
276	(196) Robert Jones.....	\$167.43
277	(197) Valerie Jordan.	\$526.11
278	(198) Dianna Justice.	\$500.00
279	(199) Curtis N. Justice and	
280	Mary Gail Justice.....	\$494.38
281	(200) Shirley Kanthack and	
282	Robert F. Kanthack.	\$100.00

283	(201) Gary Keith.	\$182.36
284	(202) Everett Shawn Kennedy and	
285	Laura Randolph-Kennedy.	\$366.76
286	(203) Tricia Kenney.	\$234.98
287	(204) Beverly Kerr.	\$397.71
288	(205) Dolores Kersey.	\$246.43
289	(206) Tamara Kessel.	\$103.88
290	(207) Walter Kidwell.	\$194.70
291	(208) Gary W. Kinder.	\$406.88
292	(209) Donald King.	\$68.85
293	(210) Teresa King.	\$210.69
294	(211) Robert Kirk.	\$400.00
295	(212) Amy Knight.	\$407.28
296	(213) Nancy Kopp.	\$88.50
297	(214) William Kovalick.	\$95.40
298	(215) Mary Ann Kuhns.	\$376.30
299	(216) Joann Kyle.	\$500.57
300	(217) Rachel Lackey and James Lackey.	\$189.13
301	(218) Larry LaFon.	\$500.00
302	(219) Anna Lambert.	\$102.14
303	(220) Dan Lambert.	\$168.81
304	(221) Kimberly Lambiotte.	\$134.57
305	(222) Elizabeth Landers.	\$250.00
306	(223) Rita Landrum.	\$250.36
307	(224) Philip S. Lawrence.	\$274.80
308	(225) Robert Lawrence.	\$155.82
309	(226) Terrah Lawson.	\$336.34
310	(227) Sabrina Layfield.	\$250.00
311	(228) Carl Leake.	\$500.00
312	(229) Mary Jo Lee and Woodrow Lee Sr.	\$398.00
313	(230) Laura Lee Leport.	\$126.10
314	(231) Francis Leppar III.	\$255.00
315	(232) Johnny Lewis.	\$150.00
316	(233) Tracy E. Lewis.	\$417.22
317	(234) Kirk D. Lightner.	\$183.85
318	(235) David Lilly.	\$119.38
319	(236) Walter Liposchak.	\$478.09

320	(237) Monica J. Lough.....	\$2,235.00
321	(238) Kathleen Loving.....	\$114.19
322	(239) Kevin D. Lowe.....	\$165.00
323	(240) Kayla Lucas.	\$276.08
324	(241) Shenola Lucas and Paul Lucas.....	\$368.62
325	(242) Richard Lucas.....	\$173.97
326	(243) Adam Luikart.	\$500.00
327	(244) Mylinda Maddox.	\$68.89
328	(245) Larry E. Mahon.	\$170.00
329	(246) Joseph Majors.....	\$100.80
330	(247) Eugene L. Marchetti III and	
331	Pamela Marchetti.	\$500.00
332	(248) Linda K. Marcum, Admin.	
333	Of the Estate of	
334	Stephanie Marcum.	\$950,000.00
335	(249) Connie Marino.	\$199,000.00
336	(250) Michael Markus.	\$106.43
337	(251) James Marshall.....	\$181.79
338	(252) Michael J. Martin.....	\$171.96
339	(253) Michael S. Martin.....	\$125.08
340	(254) Christopher Masiarczyk.....	\$260.00
341	(255) John A. Massey.	\$672.41
342	(256) Charles W. Mathes.....	\$250.00
343	(257) C.T. Matthews.	\$500.00
344	(258) Lee May.	\$164.52
345	(259) Lori McCormick.....	\$340.79
346	(260) David McCoy.....	\$514.95
347	(261) Emily McCoy.....	\$100.00
348	(262) Phyllis McCoy.	\$111.35
349	(263) James McFann.	\$335.65
350	(264) Deborah McGougan.....	\$500.00
351	(265) Betty McKenzie and	
352	Lesley McKenzie.....	\$329.60
353	(266) Rodney McKinney.....	\$329.05
354	(267) Roger McKinney.	\$500.00
355	(268) Shavon Mcle.....	\$300.75
356	(269) Joe D. McMillion.....	\$212.00

357	(270) Carl McNeely.	\$493.48
358	(271) Matthew McNeely.	\$250.00
359	(272) Victoria E. McNeil.	\$440.09
360	(273) Jody McVey.	\$242.80
361	(274) Linden L. Meade.	\$243.00
362	(275) Charlotte Meadows.	\$84.80
363	(276) Robert C. Means.	\$116.60
364	(277) Leonard Militello Jr.	\$313.65
365	(278) Eric Miller and Crystal Miller.	\$332.04
366	(279) Freeland Kent Miller.	\$538.68
367	(280) Shawn Miller and Holly Miller.	\$500.00
368	(281) Justin M. Miller.	\$1,802.00
369	(282) Debra Miller and Justin Miller.	\$250.00
370	(283) Kimberly Miller.	\$191.80
371	(284) Nancy B. Miller.	\$60,000.00
372	(285) Amy Minter.	\$600.00
373	(286) Carrie Moles.	\$500.00
374	(287) Heather D. Mongold.	\$102.22
375	(288) Thomas Monti.	\$62.02
376	(289) Elizabeth Moore.	\$445.00
377	(290) Elisha Moore and	
378	Kimberly Lynn Jarrell.	\$3,683.80
379	(291) Lisa M. Moore.	\$141.90
380	(292) Danny Morgan.	\$450.00
381	(293) Diane L. Morgan and	
382	Glenn W. Morgan.	\$312.92
383	(294) Danielle Morris.	\$159.00
384	(295) Kimberly R. Morris.	\$421.20
385	(296) Stephanie Morris.	\$79.50
386	(297) Shonnette Mosier.	\$270.28
387	(298) Dennie L. Mullins.	\$684.65
388	(299) Violet Mullins.	\$76.31
389	(300) Charles Myers.	\$401.23
390	(301) Jennifer Napier.	\$900.00
391	(302) Roger Needle.	\$116.60
392	(303) Gracie L. Neil.	\$112.36
393	(304) Jeremy D. Nester.	\$349.00

394	(305) Patricia Nicholes.	\$163.00
395	(306) Angelita Nixon.	\$132.32
396	(307) Debrah Noffsinger.	\$359.34
397	(308) One Gateway Associates LLC.	\$554,000.00
398	(309) Dalton O'Neal and Roger O'Neal.	\$185.39
399	(310) Raymond Orndorff.	\$500.00
400	(311) Tanya Ortiz and Jamie Bear.	\$442.07
401	(312) Sheila Paitsel.	\$374.00
402	(313) Judy Palmer and David Palmer.	\$603.52
403	(314) Jason Palmer.	\$500.00
404	(315) Gerard Paolucci.	\$128.35
405	(316) Benjamin Parker.	\$200.00
406	(317) Barry W. Parks.	\$500.00
407	(318) Brenda Parsons.	\$195.00
408	(319) Steve Pauley.	\$500.00
409	(320) Steven Brent Peters.	\$320,000.00
410	(321) Frances M. Pittman.	\$412.32
411	(322) Jessica Policicchio.	\$227.90
412	(323) Sheri Poore.	\$570.37
413	(324) Albert H. Postlewait Jr.	\$52.99
414	(325) Robert L. Potter and Melody Potter.	\$500.00
415	(326) Connie Poveromo.	\$261.82
416	(327) Crystal Powell.	\$229.49
417	(328) Earnestine Messer Powers and	
418	Tommy Dale Powers.	\$1,500.00
419	(329) Fred D. Price.	\$400.00
420	(330) David Pridemore.	\$500.00
421	(331) William Randall.	\$250.00
422	(332) Beverly Randolph.	\$76.27
423	(333) Jessica Reed and Thomas Reed.	\$500.00
424	(334) William Reed.	\$250.00
425	(335) Carl Remick.	\$392.00
426	(336) John Repasky.	\$132.69
427	(337) Gregory R. Rhodes.	\$494.51
428	(338) Judy A. Ridenour.	\$375.00
429	(339) Stephanie Riggs.	\$427.16
430	(340) Fredericka Riley.	\$142.04

431	(341) Jeffrey Scott Riley.	\$500.00
432	(342) Karen Rinker.	\$296.97
433	(343) Michelle Riser.	\$483.52
434	(344) Emil Ristl.	\$177.64
435	(345) Cheryl Robertson.	\$173.79
436	(346) Monte Robinette.	\$334.46
437	(347) Clayton Roderick.	\$203.47
438	(348) Andrew J. Rogers.	\$500.00
439	(349) Sandra Rounds.	\$500.00
440	(350) Leo R. Roupe and Thelma Roupe.	\$159.00
441	(351) Cheyenne Roush.	\$537.85
442	(352) Christine Roush.	\$539.54
443	(353) Betty Rowand.	\$134.64
444	(354) Betty Runyan and Richard Runyan.	\$500.00
445	(355) Doris Runyon.	\$80,000.00
446	(356) Eric L. Runyon.	\$450.00
447	(357) Sandra Russell.	\$147.79
448	(358) David Sadd.	\$702.00
449	(359) Mary L. Samples and	
450	Gary Lee Samples.	\$50,000.00
451	(360) Deborah Sansone.	\$260.57
452	(361) Paul J. Schumacher.	\$500.00
453	(362) Andrew Scoates.	\$160.24
454	(363) Larry Scott.	\$334.07
455	(364) Dale Selan.	\$431.45
456	(365) Paul Shannon.	\$109.13
457	(366) Bethany Sheets, Joseph Sheets	
458	and Doris Sheets.	\$332.10
459	(367) Stephen Shepard and	
460	Brittany Shepard.	\$266.49
461	(368) Christopher Shingleton.	\$391.67
462	(369) Danny Short.	\$476.00
463	(370) Robin Sinclair and Steve Sinclair.	\$500.00
464	(371) William Sine.	\$275.60
465	(372) Sinstar Construction.	\$510.62
466	(373) Larry S. Sites.	\$168.54
467	(374) Ned Sizemore.	\$500.00

468	(375) Jerry Slater.	\$500.00
469	(376) George Smith.	\$411.74
470	(377) Janet Smith.	\$1,081.91
471	(378) Joyce Smith.	\$468.88
472	(379) Judy Smith.	\$526.30
473	(380) Michael A. Smith.	\$250.00
474	(381) Stephen G. Smith.	\$255.63
475	(382) Jeena Snider.	\$356.11
476	(383) Patricia A. Snyder and Kali E. Snyder.	\$528.86
477	(384) David R. Somerville.	\$242.56
478	(385) Kari Southern.	\$144.69
479	(386) Lori Sovel.	\$105.95
480	(387) Anthony Spagnuolo.	\$1,000.00
481	(388) Specialty Printers LTD.	\$168.94
482	(389) Lucy Sprouse.	\$216.41
483	(390) Johnna Stalnaker.	\$356.63
484	(391) Gene Stanley and Cassandra Marko.	\$350.00
485	(392) Edna R. Starcher.	\$136.89
486	(393) Stefanie Starcher.	\$316.39
487	(394) Brittney Stark.	\$608.62
488	(395) Shirley Stephens.	\$574.21
489	(396) Amy Stern and Michael Stern.	\$385.62
490	(397) John H. Stevens and Janett S. Stevens.	\$500.00
491	(398) Becky Stewart.	\$309.60
492	(399) Rick Stewart.	\$238.50
493	(400) Justin Stirewalt.	\$356.49
494	(401) Dean Stone and Penny Stone.	\$246.05
495	(402) Roger Stoneburner.	\$425.00
496	(403) Bernard Stout.	\$174.60
497	(404) Mary Lou Stowers and	
498	Charles Stowers.	\$264.85
499	(405) Tim Stowers and Stacy Stowers.	\$265.01
500	(406) Sharon Strehlen.	\$108.12
501	(407) Chelsea Stuberg.	\$180.18
502	(408) Connie Swanger.	\$100.00
503	(409) Calvin Swayne.	\$138.50
504	(410) Gary Allen Sweeney.	\$653.52

505	(411) Aladdin Z. Syed.	\$1,000.00
506	(412) Erma Tatar.	\$100.00
507	(413) Texie D. Tate and Jackie D. Tate.	\$364.98
508	(414) George Taylor.	\$47.44
509	(415) Larry Taylor.	\$363.82
510	(416) Ronald L. Taylor.	\$500.00
511	(417) Leonard Tenney.	\$173.76
512	(418) Betty P. Thomas.	\$100.00
513	(419) Debbie Thomas.	\$500.00
514	(420) Larry Thompson and	
515	Lavana Thompson.	\$643.54
516	(421) Vern Thompson Jr.	\$5,542.50
517	(422) Sandra Toler and Tyler R. Davis.	\$600.57
518	(423) Christopher Tolley and	
519	Brittany Tolley.	\$173.77
520	(424) Richard S. Truitt.	\$100.00
521	(425) Pearline Turner.	\$945.21
522	(426) Michelle Vargo.	\$463.47
523	(427) Rebecca A. Vaughn.	\$109.66
524	(428) Amanda Vickers.	\$117.86
525	(429) Brian Virtue.	\$353.90
526	(430) Gaylen Vitioe.	\$153.38
527	(431) Gary Walker.	\$500.00
528	(432) Margaret Irene Walker.	\$299.98
529	(433) Andrea Ward.	\$1,836.53
530	(434) Paul M. Ware and Sharon A. Ware.	\$500.00
531	(435) Bruce Warren.	\$177.19
532	(436) Joe Waters.	\$329.84
533	(437) Brian Watkins.	\$350.00
534	(438) Margaret Waybright.	\$430.05
535	(439) Stephanie Wendell.	\$266.03
536	(440) Melissa Wepler.	\$250.00
537	(441) Jennifer Westbrook.	\$531.13
538	(442) Sheila White and Lesslie White.	\$443.08
539	(443) Paul White and Karen White.	\$737.72
540	(444) Roger A. White and Terri Ann White.	\$335.04
541	(445) Shannon White.	\$100.00

542	(446) Chasidy Williams.	\$570.00
543	(447) Terri Williamson and	
544	Curtis Williamson.	\$500.00
545	(448) Jennifer G. Willits.	\$454.94
546	(449) Betty A. Wilson.	\$250.00
547	(450) Brian Wilson.	\$267.95
548	(451) Claude Wilson.	\$283.94
549	(452) Shirley Ann Wilson.	\$100.00
550	(453) James P. Winski.	\$373.28
551	(454) Vickie Epling Withers.	\$132.50
552	(455) Stephanie Wolverton.	\$450.53
553	(456) Vickie L. Wood.	\$72.08
554	(457) Ronna Woods.	\$533.83
555	(458) Emma J. Wright.	\$175.00
556	(459) Douglas Yanak.	\$125.08
557	(460) Cecelia Yaniga.	\$250.00
558	(461) Carla Yaquinta.	\$278.71
559	(462) Charles E. Yates.	\$190.22
560	(463) Daniel Zickafoose.	\$148.20
561	(464) George Friend.	\$183.38
562	(465) Melanie Bruni.	\$104.73
563	(466) Cara L. McNeely.	\$116.07
564	(467) James A. Schneider.	\$252.00
565	(468) Michael W. Steele.	\$159.65

566 (g) *Claim against the Educational Broadcasting*
567 *Authority:*

568 (TO BE PAID FROM SPECIAL REVENUE FUND)

569 (1) Atlantic Broadband Group LLC. \$9,650.15

570 (h) *Claim against the Public Service Commission:*

571 (TO BE PAID FROM SPECIAL REVENUE FUND)

334	CLAIMS	[Ch. 23
572	(1) Pomeroy IT Solutions.	\$695.40
573	(h) <i>Claims against the Regional Jail and Correctional</i>	
574	<i>Facility Authority:</i>	
575	(TO BE PAID FROM SPECIAL REVENUE FUND)	
576	(1) Sammy Ray Copley.	\$43.09
577	(2) Shawn Edwards.	\$25.00
578	(3) Charles E. Jarrett.	\$326.00
579	(4) Huong Thi Phung.	\$15,100.00
580	(5) Donald Berkley Surber Jr..	\$500.00
581	(6) Calvin C. Love.	\$464.00
582	(7) Anthony R. White.	\$304.00
583	(i) <i>Claim against the State Tax Department:</i>	
584	(TO BE PAID FROM GENERAL REVENUE FUND)	
585	(1) George V. Piper.	\$150.00
586	The Legislature finds that the above moral obligations	
587	and the appropriations made in satisfaction thereof shall be	
588	the full compensation for all claimants and that prior to the	
589	payments to any claimant provided in this bill, the Court of	
590	Claims shall receive a release from said claimant releasing	
591	any and all claims for moral obligations arising from the	
592	matters considered by the Legislature in the finding of the	
593	moral obligations and the making of the appropriations for	
594	said claimant. The Court of Claims shall deliver all releases	
595	obtained from claimants to the department against which the	
596	claim was allowed.	

CHAPTER 24

(Com. Sub. for H. B. 2437 - By Delegates
Caputo, Manchin, Longstreth, Poore,
Manypenny, L. Phillips and D. Poling)

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22A-6-11; relating to directing the Board of Coal Mine Health and Safety to conduct study of whether to require installation of mining machines automatic shut-offs when methane is detected.

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 §22A-6-11, to read as follows:

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-11. Study of methane detecting shut-off devices.

1 *Study of Automatic shut-down of mining machines.* -- The
2 Board of Coal Mine Health and Safety is directed to conduct
3 a study of the safety of installation of methane detection shut-
4 off devices on machine extraction apparatus, including, but
5 not limited to, long wall sheers and cutter heads. The Board
6 shall study the benefits and appropriateness of requiring the

7 installation of these devices, to determine if there are safety
8 benefits, and whether the Board recommends to the
9 Legislature that requirements regarding mandating these
10 devices in underground mines is warranted. The Board shall
11 report to the Legislature's Joint Committee on Government
12 and Finance by December 31, 2011 with recommendations
13 regarding whether it is appropriate to implement any
14 requirements.

CHAPTER 25

**(Com. Sub. for H. B. 2888 - By Delegates Hamilton,
Barker, M. Poling, Mahan, Marshall, Moore,
D. Poling, Caputo, Longstreth, Ellem and Savilla)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22A-6-12; relating to directing the Board of Coal Mine Health and Safety to conduct a study of strengthening of protections for whistleblowers of unsafe working conditions in mines.

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 §22A-6-12, to read as follows:

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-12. Study of whistleblower protections.

1 *Study of Whistleblower protections.* -- The Board of Coal
 2 Mine Health and Safety is directed to conduct a study of the
 3 need to expand protections for whistleblowers and other miners
 4 who refuse to work in situations they perceive as unsafe in
 5 underground mines. The Board shall study the benefits and
 6 appropriateness of requiring additional protections that will
 7 encourage miners to withdrawal from and report unsafe working
 8 conditions. The Board shall investigate whether any pattern of
 9 retribution exists against these persons, and if so make
 10 recommendations to the Legislature regarding implementing
 11 additional protections. The Board shall report to the
 12 Legislature's Joint Committee on Government and Finance by
 13 December 31, 2011 with recommendations regarding whether
 14 it is appropriate to implement any additional protections.

CHAPTER 26

**(H. B. 2935 - By Delegates
 Miley, Ferro and Frazier)**

[Passed March 8, 2011; in effect ninety days from passage.]
 [Approved by the Governor on March 18, 2011.]

AN ACT to repeal §3-4-1, §3-4-2, §3-4-3, §3-4-4, §3-4-5, §3-4-6, §3-4-7, §3-4-8, §3-4-9, §3-4-10, §3-4-11, §3-4-12, §3-4-12a, §3-4-13, §3-4-14, §3-4-15, §3-4-16, §3-4-17, §3-4-18, §3-4-19, §3-4-20, §3-4-21, §3-4-22, §3-4-23, §3-4-24, §3-4-25, §3-4-26, §3-4-27, §3-4-28, §3-4-29, §3-4-30, §3-4-31 and §3-4-32 of the

Code of West Virginia, 1931, as amended, all relating to outdated and obsolete sections concerning voting machines in general no longer approved for use in elections.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating use of certain voting machines in West Virginia

1 §3-4-1, §3-4-2, §3-4-3, §3-4-4, §3-4-5, §3-4-6, §3-4-7,
2 §3-4-8, §3-4-9, §3-4-10, §3-4-11, §3-4-12, §3-4-12a,
3 §3-4-13, §3-4-14, §3-4-15, §3-4-16, §3-4-17, §3-4-18,
4 §3-4-19, §3-4-20, §3-4-21, §3-4-22, §3-4-23, §3-4-24,
5 §3-4-25, §3-4-26, §3-4-27, §3-4-28, §3-4-29, §3-4-30,
6 §3-4-31 and §3-4-32 of the Code of West Virginia, 1931, as
7 amended, are hereby repealed.

CHAPTER 27

**(Com. Sub. for S. B. 582 - By Senators
Miller and Williams)**

[Passed March 4, 2011; in effect July 1, 2011.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §29-4-15 of the Code of West Virginia, 1931, as amended, relating to commissioners appointed by the Governor to acknowledge signatures; and designating specific criteria for seals of commissioners.

Be it enacted by the Legislature of West Virginia:

That §29-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.

§29-4-15. Seal of such commissioner.

1 (a) Each commissioner shall have an official seal which
2 shall be a rubber stamp and shall contain:

3 (1) The words “Official Seal”;

4 (2) The words “Commissioner for West Virginia”;

5 (3) The commissioner’s name exactly as it is written as
6 an official signature;

7 (4) The city and state of residence of the commissioner;

8 (5) The words “My Commission Expires” and the date of
9 expiration of the commission.

10 (b) A stamped imprint of the seal, together with the
11 official signature, shall be filed in the office of the Secretary
12 of State.

13 (c) A person holding a commission prior to July 1, 2011,
14 is not required to obtain or use a rubber stamp seal with the
15 specifications set out in subsection (a) of this section, prior to
16 the expiration of that commission.



CHAPTER 28

(S. B. 376 - By Senator Beach)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §36B-3-102 of the Code of West Virginia, 1931, as amended, relating to permitting unit owners' associations to institute legal action against a unit owner to collect dues or assessments that are overdue or in arrears to the association.

Be it enacted by the Legislature of West Virginia:

That §36B-3-102 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

§36B-3-102. Powers of unit owners' association.

1 (a) Except as provided in subsection (b), and subject to
2 the provisions of the declaration, the association, even if
3 unincorporated, may:

4 (1) Adopt and amend bylaws and rules and regulations;

5 (2) Adopt and amend budgets for revenues, expenditures,
6 and reserves and collect assessments for common expenses
7 from unit owners;

8 (3) Hire and discharge managing agents and other
9 employees, agents, and independent contractors;

10 (4) Institute, defend, or intervene in litigation or
11 administrative proceedings in its own name on behalf of itself
12 or two or more unit owners on matters affecting the common
13 interest community;

14 (5) Make contracts and incur liabilities;

15 (6) Regulate the use, maintenance, repair, replacement,
16 and modification of common elements;

17 (7) Cause additional improvements to be made as a part
18 of the common elements;

19 (8) Acquire, hold, encumber, and convey in its own name
20 any right, title, or interest to real estate or personal property,
21 but (i) common elements in a condominium or planned
22 community may be conveyed or subjected to a security
23 interest only pursuant to section one hundred twelve of this
24 article and (ii) part of a cooperative may be conveyed, or all
25 or part of a cooperative may be subjected to a security
26 interest, only pursuant to section one hundred twelve of this
27 article;

28 (9) Grant easements, leases, licenses, and concessions
29 through or over the common elements;

30 (10) Impose and receive any payments, fees, or charges
31 for the use, rental, or operation of the common elements,
32 other than limited common elements described in subsections
33 (1) and (4), section one hundred two, article two of this
34 chapter, and for services provided to unit owners;

35 (11) Impose charges for late payment of assessments and,
36 after notice and an opportunity to be heard, levy reasonable

37 fines for violations of the declaration, bylaws, rules, and
38 regulations of the association;

39 (12) Impose reasonable charges for the preparation and
40 recordation of amendments to the declaration, resale
41 certificates required by section one hundred nine, article four
42 of this chapter, or statements of unpaid assessments;

43 (13) Provide for the indemnification of its officers and
44 executive board and maintain directors' and officers' liability
45 insurance;

46 (14) Assign its right to future income, including the right
47 to receive common expense assessments, but only to the
48 extent the declaration expressly so provides;

49 (15) Exercise any other powers conferred by the
50 declaration or bylaws;

51 (16) Exercise all other powers that may be exercised in
52 this state by legal entities of the same type as the association;

53 (17) Institute litigation or administrative proceedings in
54 its own name against a unit owner for the collection of dues
55 or assessments that are overdue or in arrears; and

56 (18) Exercise any other powers necessary and proper for
57 the governance and operation of the association.

58 (b) The declaration may not impose limitations on the
59 power of the association to deal with the declarant which are
60 more restrictive than the limitations imposed on the power of
61 the association to deal with other persons.

●

CHAPTER 29

**(Com. Sub. for H. B. 2505 - By Delegates Perdue,
Boggs, Hatfield, Cann, Rodighiero, Moye,
Poore, Border, C. Miller, Hamilton and Lawrence)**

[Passed March 12, 2011; in effect thirty days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §60A-1-101 the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-204 of said code; and to amend and reenact §60A-4-401 of said code, all relating to adding certain cannabinoids, hallucinogens and stimulants to the Schedule I list of controlled substances; proving penalties; and clarifying references to definitions.

Be it enacted by the Legislature of West Virginia:

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-204 of said code be amended and reenacted; and that §60A-4-401 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS.

§60A-1-101. Definitions.

1 As used in this act:

2 (a) “Administer” means the direct application of a
3 controlled substance whether by injection, inhalation,
4 ingestion or any other means to the body of a patient or
5 research subject by:

6 (1) A practitioner (or, in his presence, by his authorized
7 agent); or

8 (2) The patient or research subject at the direction and in
9 the presence of the practitioner.

10 (b) "Agent" means an authorized person who acts on
11 behalf of or at the direction of a manufacturer, distributor or
12 dispenser. It does not include a common or contract carrier,
13 public warehouseman or employee of the carrier or
14 warehouseman.

15 (c) "Analogue" means a substance that, in relation to a
16 controlled substance, has a substantially similar chemical
17 structure.

18 (d) "Bureau" means the "Bureau of Narcotics and
19 Dangerous Drugs, United States Department of Justice" or its
20 successor agency.

21 (e) "Controlled substance" means a drug, substance or
22 immediate precursor in Schedules I through V of article two.

23 (f) "Counterfeit substance" means a controlled substance
24 which, or the container or labeling of which, without
25 authorization, bears the trademark, trade name or other
26 identifying mark, imprint, number or device, or any likeness
27 thereof, of a manufacturer, distributor or dispenser other than
28 the person who in fact manufactured, distributed or dispensed
29 the substance.

30 (g) "Imitation controlled substance" means: (1) A
31 controlled substance which is falsely represented to be a
32 different controlled substance; (2) a drug or substance which
33 is not a controlled substance but which is falsely represented
34 to be a controlled substance; or (3) a controlled substance or
35 other drug or substance or a combination thereof which is

36 shaped, sized, colored, marked, imprinted, numbered,
37 labeled, packaged, distributed or priced so as to cause a
38 reasonable person to believe that it is a controlled substance.

39 (h) “Deliver” or “delivery” means the actual, constructive
40 or attempted transfer from one person to another of: (1) A
41 controlled substance, whether or not there is an agency
42 relationship; (2) a counterfeit substance; or (3) an imitation
43 controlled substance.

44 (i) “Dispense” means to deliver a controlled substance to
45 an ultimate user or research subject by or pursuant to the
46 lawful order of a practitioner, including the prescribing,
47 administering, packaging, labeling or compounding
48 necessary to prepare the substance for that delivery.

49 (j) “Dispenser” means a practitioner who dispenses.

50 (k) “Distribute” means to deliver, other than by
51 administering or dispensing, a controlled substance, a
52 counterfeit substance or an imitation controlled substance.

53 (l) “Distributor” means a person who distributes.

54 (m) “Drug” means: (1) Substances recognized as drugs
55 in the official “United States Pharmacopoeia, official
56 Homeopathic Pharmacopoeia of the United States or official
57 National Formulary”, or any supplement to any of them; (2)
58 substances intended for use in the diagnosis, cure, mitigation,
59 treatment or prevention of disease in man or animals; (3)
60 substances (other than food) intended to affect the structure
61 or any function of the body of man or animals; and (4)
62 substances intended for use as a component of any article
63 specified in clause (1), (2) or (3) of this subdivision. It does
64 not include devices or their components, parts or accessories.

65 (n) “Immediate derivative” means a substance which the
66 “West Virginia Board of Pharmacy” has found to be and by

67 rule designates as being the principal compound or any
68 analogue of the parent compound manufactured from a
69 known controlled substance primarily for use and which has
70 equal or similar pharmacologic activity as the parent
71 compound which is necessary to prevent, curtail or limit
72 manufacture.

73 (o) "Immediate precursor" means a substance which the
74 "West Virginia Board of Pharmacy" (hereinafter in this act
75 referred to as the State Board of Pharmacy) has found to be
76 and by rule designates as being the principal compound
77 commonly used or produced primarily for use and which is
78 an immediate chemical intermediary used or likely to be used
79 in the manufacture of a controlled substance, the control of
80 which is necessary to prevent, curtail or limit manufacture.

81 (p) "Manufacture" means the production, preparation,
82 propagation, compounding, conversion or processing of a
83 controlled substance, either directly or indirectly or by
84 extraction from substances of natural origin, or independently
85 by means of chemical synthesis, or by a combination of
86 extraction and chemical synthesis, and includes any
87 packaging or repackaging of the substance or labeling or
88 relabeling of its container, except that this term does not
89 include the preparation, compounding, packaging or labeling
90 of a controlled substance:

91 (1) By a practitioner as an incident to his administering
92 or dispensing of a controlled substance in the course of his
93 professional practice; or

94 (2) By a practitioner, or by his authorized agent under his
95 supervision, for the purpose of, or as an incident to, research,
96 teaching or chemical analysis and not for sale.

97 (q) "Marijuana" means all parts of the plant "Cannabis
98 sativa L.", whether growing or not; the seeds thereof; the

99 resin extracted from any part of the plant; and every
100 compound, manufacture, salt, immediate derivative, mixture
101 or preparation of the plant, its seeds or resin. It does not
102 include the mature stalks of the plant, fiber produced from
103 the stalks, oil or cake made from the seeds of the plant, any
104 other compound, manufacture, salt, immediate derivative,
105 mixture or preparation of the mature stalks (except the resin
106 extracted therefrom), fiber, oil or cake, or the sterilized seed
107 of the plant which is incapable of germination.

108 (r) "Narcotic drug" means any of the following, whether
109 produced directly or indirectly by extraction from substances
110 of vegetable origin or independently by means of chemical
111 synthesis, or by a combination of extraction and chemical
112 synthesis:

113 (1) Opium and opiate and any salt, compound, immediate
114 derivative or preparation of opium or opiate.

115 (2) Any salt, compound, isomer, immediate derivative or
116 preparation thereof which is chemically equivalent or
117 identical with any of the substances referred to in paragraph
118 (1) of this subdivision, but not including the isoquinoline
119 alkaloids of opium.

120 (3) Opium poppy and poppy straw.

121 (4) Coca leaves and any salt, compound, immediate
122 derivative or preparation of coca leaves and any salt,
123 compound, isomer, immediate derivative or preparation
124 thereof which is chemically equivalent or identical with any
125 of these substances, but not including decocainized coca
126 leaves or extractions of coca leaves which do not contain
127 cocaine or ecgonine.

128 (s) "Opiate" means any substance having an addiction-
129 forming or addiction-sustaining liability similar to morphine

130 or being capable of conversion into a drug having addiction-
131 forming or addiction-sustaining liability. It does not include,
132 unless specifically designated as controlled under section two
133 hundred one, article two of this chapter, the dextrorotatory
134 isomer of 3-methoxy-n-methylmorphinan and its salts
135 (dextromethorphan). It does not include its racemic and
136 levorotatory forms.

137 (t) "Opium poppy" means the plant of the species
138 "Papaver somniferum L.", except its seeds.

139 (u) "Person" means individual, corporation, government
140 or governmental subdivision or agency, business trust, estate,
141 trust, partnership or association, or any other legal entity.

142 (v) "Placebo" means an inert medicament or preparation
143 administered or dispensed for its psychological effect, to
144 satisfy a patient or research subject or to act as a control in
145 experimental series.

146 (w) "Poppy straw" means all parts, except the seeds, of
147 the opium poppy after mowing.

148 (x) "Practitioner" means:

149 (1) A physician, dentist, veterinarian, scientific
150 investigator or other person licensed, registered or otherwise
151 permitted to distribute, dispense, conduct research with
152 respect to, or to administer a controlled substance in the
153 course of professional practice or research in this state.

154 (2) A pharmacy, hospital or other institution licensed,
155 registered or otherwise permitted to distribute, dispense,
156 conduct research with respect to, or to administer a controlled
157 substance in the course of professional practice or research in
158 this state.

159 (y) "Production" includes the manufacture, planting,
160 cultivation, growing or harvesting of a controlled substance.

161 (z) "State", when applied to a part of the United States,
162 includes any state, district, commonwealth, territory, insular
163 possession thereof and any area subject to the legal authority
164 of the United States of America.

165 (aa) "Ultimate user" means a person who lawfully
166 possesses a controlled substance for his own use or for the
167 use of a member of his household or for administering to an
168 animal owned by him or by a member of his household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) Opiates. Unless specifically excepted or unless listed
6 in another schedule, any of the following opiates, including
7 their isomers, esters, ethers, salts and salts of isomers, esters
8 and ethers, whenever the existence of such isomers, esters,
9 ethers and salts is possible within the specific chemical
10 designation (for purposes of subdivision (34) of this
11 subsection only, the term isomer includes the optical and
12 geometric isomers):

13 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
14 phenethyl) -4-piperidiny]-N-phenylacetamide);

15 (2) Acetylmethadol;

16 (3) Allylprodine;

17 (4) Alphacetylmethadol (except levoalphacetylmethadol
18 also known as levo-alpha-acetylmethadol, levomethadyl
19 acetate, or LAAM);

- 20 (5) Alphameprodine;
- 21 (6) Alphamethadol;
- 22 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
23 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
24 phenylethyl)-4-(N- propanilido) piperidine);
- 25 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)
26 ethyl- 4-piperidinyl]-N-phenylpropanamide);
- 27 (9) Benzethidine;
- 28 (10) Betacetylmethadol;
- 29 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-
30 phenethyl)-4- piperidinyl]-N-phenylpropanamide);
- 31 (12) Beta-hydroxy-3-methylfentanyl (other name:
32 N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]
33 -N-phenylpropanamide);
- 34 (13) Betameprodine;
- 35 (14) Betamethadol;
- 36 (15) Betaprodine;
- 37 (16) Clonitazene;
- 38 (17) Dextromoramide;
- 39 (18) Diampromide;
- 40 (19) Diethylthiambutene;
- 41 (20) Difenoxin;

- 42 (21) Dimenoxadol;
- 43 (22) Dimepheptanol;
- 44 (23) Dimethylthiambutene;
- 45 (24) Dioxaphetyl butyrate;
- 46 (25) Dipipanone;
- 47 (26) Ethylmethylthiambutene;
- 48 (27) Etonitazene;
- 49 (28) Etoxeridine;
- 50 (29) Furethidine;
- 51 (30) Hydroxypethidine;
- 52 (31) Ketobemidone;
- 53 (32) Levomoramide;
- 54 (33) Levophenacymorphan;
- 55 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
56 piperidyl]-N-phenylpropanamide);
- 57 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)
58 ethyl-4- piperidinyl]-N-phenylpropanamide);
- 59 (36) Morpheridine;
- 60 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 61 (38) Noracymethadol;

- 62 (39) Norlevorphanol;
- 63 (40) Normethadone;
- 64 (41) Norpipanone;
- 65 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
66 phenethyl)-4-piperidinyl] propanamide);
- 67 (43) PEPAP(1-(-2-phenethyl)-4-phenyl-4-
68 acetoxypiperidine);
- 69 (44) Phenadoxone;
- 70 (45) Phenampromide;
- 71 (46) Phenomorphan;
- 72 (47) Phenoperidine;
- 73 (48) Piritramide;
- 74 (49) Proheptazine;
- 75 (50) Properidine;
- 76 (51) Propiram;
- 77 (52) Racemoramide;
- 78 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-
79 piperidinyl]-propanamide);
- 80 (54) Tilidine;
- 81 (55) Trimeperidine.

82 (c) Opium derivatives. -- Unless specifically excepted or
83 unless listed in another schedule, any of the following opium
84 immediate derivatives, its salts, isomers and salts of isomers
85 whenever the existence of such salts, isomers and salts of
86 isomers is possible within the specific chemical designation:

- 87 (1) Acetorphine;
- 88 (2) Acetyldihydrocodeine;
- 89 (3) Benzylmorphine;
- 90 (4) Codeine methylbromide;
- 91 (5) Codeine-N-Oxide;
- 92 (6) Cyprenorphine;
- 93 (7) Desomorphine;
- 94 (8) Dihydromorphine;
- 95 (9) Drotebanol;
- 96 (10) Etorphine (except HCl Salt);
- 97 (11) Heroin;
- 98 (12) Hydromorphanol;
- 99 (13) Methyldesorphine;
- 100 (14) Methyldihydromorphine;
- 101 (15) Morphine methylbromide;
- 102 (16) Morphine methylsulfonate;

103 (17) Morphine-N-Oxide;

104 (18) Myrophine;

105 (19) Nicocodeine;

106 (20) Nicomorphine;

107 (21) Normorphine;

108 (22) Pholcodine;

109 (23) Thebacon.

110 (d) Hallucinogenic substances. -- Unless specifically
111 excepted or unless listed in another schedule, any material,
112 compound, mixture or preparation, which contains any
113 quantity of the following hallucinogenic substances, or which
114 contains any of its salts, isomers and salts of isomers,
115 whenever the existence of such salts, isomers, and salts of
116 isomers is possible within the specific chemical designation
117 (for purposes of this subsection only, the term "isomer"
118 includes the optical, position and geometric isomers):

119 (1) Alpha-ethyltryptamine; some trade or other names:
120 etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine;
121 3-(2-aminobutyl) indole; alpha-ET; and AET;

122 (2) 4-bromo-2,5-dimethoxy-amphetamine; some trade or
123 other names: 4-bromo-2,5-dimethoxy-alpha-
124 methylphenethylamine; 4-bromo-2,5-DMA;

125 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade
126 or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-
127 aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

128 (4) 2,5-dimethoxyamphetamine; some trade or other
129 names: 2,5-dimethoxy-alpha-methylphenethylamine;
130 2,5-DMA;

131 (5) 2,5-dimethoxy-4-ethylamphet-amine; some trade or
132 other names: DOET;

133 (6) 4-methoxyamphetamine; some trade or other names:
134 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ;
135 paramethoxyamphetamine; PMA;

136 (7) 5-methyloxy-3, 4-methylenedioxy-amphetamine;

137 (8) 4-methyl-2,5-dimethoxy-amphetamine; some trade
138 and other names: 4-methyl-2,5-dimethoxy-alpha-
139 methylphenethylamine; "DOM"; and "STP";

140 (9) 3,4-methylenedioxy amphetamine;

141 (10) 3,4-methylenedioxymethamphetamine (MDMA);

142 (11) 3,4-methylenedioxy-N-ethylamphetamine (also
143 known as N- ethyl-alpha-methyl-3,4 (methylenedioxy)
144 phenethylamine, N-ethyl MDA, MDE, MDEA);

145 (12) N-hydroxy-3,4-methylenedioxyamphetamine (also
146 known as N- hydroxy-alpha-methyl-3,4 (methylenedioxy)
147 phenethylamine, and N- hydroxy MDA);

148 (13) 3,4,5-trimethoxy amphetamine;

149 (14) Bufotenine; some trade and other names: 3-
150 (beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethyl
151 aminoethyl) -5-indolol; N, N-dimethylserotonin;
152 5-hydroxy-N,N- dimethyltryptamine; mappine;

153 (15) Diethyltryptamine; some trade and other names:
154 N, N-Diethyltryptamine; DET;

155 (16) Dimethyltryptamine; some trade or other names:
156 DMT;

- 157 (17) Ibogaine; some trade and other names: 7-Ethyl-6,
158 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
159 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole;
160 Tabernanthe iboga;
- 161 (18) Lysergic acid diethylamide;
- 162 (19) Marijuana;
- 163 (20) Mescaline;
- 164 (21) Parahexyl-7374; some trade or other names:
165 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-
166 6H-dibenzo [b,d] pyran; Synhexyl;
- 167 (22) Peyote; meaning all parts of the plant presently
168 classified botanically as *Lophophora williamsii* Lemaire,
169 whether growing or not, the seeds thereof, any extract from
170 any part of such plant, and every compound, manufacture,
171 salts, immediate derivative, mixture or preparation of such
172 plant, its seeds or extracts;
- 173 (23) N-ethyl-3-piperidyl benzilate;
- 174 (24) N-methyl-3-piperidyl benzilate;
- 175 (25) Psilocybin;
- 176 (26) Psilocyn;
- 177 (27) Tetrahydrocannabinols; synthetic equivalents of the
178 substances contained in the plant, or in the resinous
179 extractives of *Cannabis*, sp. and/or synthetic substances,
180 immediate derivatives and their isomers with similar
181 chemical structure and pharmacological activity such as the
182 following:

183 delta-1 Cis or trans tetrahydrocannabinol, and their
184 optical isomers;

185 delta-6 Cis or trans tetrahydrocannabinol, and their
186 optical isomers;

187 delta-3,4 Cis or trans tetrahydrocannabinol, and its
188 optical isomers;

189 (Since nomenclature of these substances is not
190 internationally standardized, compounds of these structures,
191 regardless of numerical designation of atomic positions
192 covered.)

193 (28) Ethylamine analog of phencyclidine; some trade or
194 other names: N-ethyl-1-phenylcyclohexylamine,
195 (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
196 ethylamine, cyclohexamine, PCE;

197 (29) Pyrrolidine analog of phencyclidine; some trade or
198 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,
199 PHP;

200 (30) Thiophene analog of phencyclidine; some trade or
201 other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine,
202 2-thienylanalog of phencyclidine; TPCP, TCP;

203 (31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other
204 names: TCPy.

205 (32) Synthetic Cannabinoids as follows:

206 (a) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-
207 2-yl)phenol {also known as CP 47,497 and homologs};

208 (b) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-
209 methylnonan-2-yl)phenol {also known as CP 47,497-C8
210 homolog};

- 211 (c) [(6a*R*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
212 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[*c*]chromen-
213 1-ol] {also known as HU-210};
- 214 (d) (dexanabinol, (6a*S*,10a*S*)-9-(hydroxymethyl)-6,6-
215 dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-
216 tetrahydrobenzo[*c*]chromen-1-ol) {also known as HU-211};
- 217 (e) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-
218 018};
- 219 (f) 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-
220 073};
- 221 (g) (2-methyl-1-propyl-1*H*-indol-3-yl)-1-naphthalenyl-
222 methanone {also known as JWH-015};
- 223 (h) (1-hexyl-1*H*-indol-3-yl)-1-naphthalenyl-methanone
224 {also known as JWH-019};
- 225 (i) [1-[2-(4-morpholinyl)ethyl]-1*H*-indol-3-yl]-1-
226 naphthalenyl-methanone {also known as JWH-200};
- 227 (j) 1-(1-pentyl-1*H*-indol-3-yl)-2-(3-hydroxyphenyl)-
228 ethanone {also known as JWH-250};
- 229 (k) 2-((1*S*,2*S*,5*S*)-5-hydroxy-2-(3-hydroxypropyl)
230 cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as
231 CP 55,940};
- 232 (l) (4-methyl-1-naphthalenyl)(1-pentyl-1*H*-indol-3-yl)-
233 methanone {also known as JWH-122};
- 234 (m) (4-methyl-1-naphthalenyl)(1-pentyl-1*H*-indol-3-yl)-
235 methanone {also known as JWH-398};
- 236 (n) (4-methoxyphenyl)(1-pentyl-1*H*-indol-3-
237 yl)methanone {also known as RCS-4};

238 (o)1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
239 methoxyphenyl)ethanone {also known as RCS-8}; and

240 (Since nomenclature of these substances is not
241 internationally standardized, any immediate precursor or
242 immediate derivative of these substances shall be covered).

243 (e) Depressants. Unless specifically excepted or unless
244 listed in another schedule, any material, compound, mixture,
245 or preparation which contains any quantity of the following
246 substances having a depressant effect on the central nervous
247 system, including its salts, isomers and salts of isomers
248 whenever the existence of such salts, isomers and salts of
249 isomers is possible within the specific chemical designation:

250 (1) Mecloqualone;

251 (2) Methaqualone.

252 (f) Stimulants. Unless specifically excepted or unless
253 listed in another schedule, any material, compound, mixture,
254 or preparation which contains any quantity of the following
255 substances having a stimulant effect on the central nervous
256 system, including its salts, isomers, and salts of isomers:

257 (1) Aminorex; some other names: aminoxaphen;
258 2-amino-5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-
259 2-oxazolamine;

260 (2) Cathinone; some trade or other names:
261 2-amino-1-phenyl-1- propanone, alpha-aminopropiophenone,
262 2-aminopropiophenone, and norephedrone;

263 (3) Fenethylamine;

264 (4) Methcathinone, its immediate precursors and
265 immediate derivatives, its salts, optical isomers and salts of

- 266 optical isomers; some other names: (2-(methylamino)-
267 propiophenone; alpha-(methylamino) propiophenone;
268 2-(methylamino)-1-phenylpropan-1-one; alpha--
269 methylaminopropiophenone; monomethylpropion; 3,4-
270 methylenedioxypropylvalerone and/or mephedrone; 3,4-
271 methylenedioxypropylvalerone (MPVD); ephedrone; -
272 methylcathinone; methylcathinone; AL-464; AL-422; AL-
273 463 and UR1432;
- 274 (5) (+-) cis-4-methylaminorex; (+-)cis-4,5-dihydro-4-
275 methyl- 5-phenyl-2-oxazolamine);
- 276 (6) N-ethylamphetamine;
- 277 (7) N,N-dimethylamphetamine; also known as
278 N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-
279 trimethylphenethylamine.
- 280 (g) Temporary listing of substances subject to
281 emergency scheduling. Any material, compound, mixture or
282 preparation which contains any quantity of the following
283 substances:
- 284 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
285 (benzylfentanyl), its optical isomers, salts, and salts of
286 isomers.
- 287 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide
288 (thenylfentanyl), its optical isomers, salts and salts of
289 isomers.
- 290 (8) N-benzylpiperazine, also known as BZP.

ARTICLE 4. OFFENSES AND PENALTIES.**§60A-4-401. Prohibited acts A; penalties.**

1 (a) Except as authorized by this act, it is unlawful for any
2 person to manufacture, deliver, or possess with intent to
3 manufacture or deliver, a controlled substance.

4 Any person who violates this subsection with respect to:

5 (i) A controlled substance classified in Schedule I or II,
6 which is a narcotic drug, is guilty of a felony and, upon
7 conviction, may be imprisoned in the state correctional
8 facility for not less than one year nor more than fifteen years,
9 or fined not more than twenty-five thousand dollars, or both;

10 (ii) Any other controlled substance classified in Schedule
11 I, II or III is guilty of a felony and, upon conviction, may be
12 imprisoned in the state correctional facility for not less than
13 one year nor more than five years, or fined not more than
14 fifteen thousand dollars, or both;

15 (iii) A substance classified in Schedule IV is guilty of a
16 felony and, upon conviction, may be imprisoned in the state
17 correctional facility for not less than one year nor more than
18 three years, or fined not more than ten thousand dollars, or both;

19 (iv) A substance classified in Schedule V is guilty of a
20 misdemeanor and, upon conviction, may be confined in jail
21 for not less than six months nor more than one year, or fined
22 not more than five thousand dollars, or both: *Provided*, That
23 for offenses relating to any substance classified as Schedule
24 V in article ten of this chapter, the penalties established in
25 said article apply.

26 (b) Except as authorized by this act, it is unlawful for any
27 person to create, deliver, or possess with intent to deliver, a
28 counterfeit substance.

29 Any person who violates this subsection with respect to:

30 (i) A counterfeit substance classified in Schedule I or II,
31 which is a narcotic drug, is guilty of a felony and, upon
32 conviction, may be imprisoned in the state correctional
33 facility for not less than one year nor more than fifteen years,
34 or fined not more than twenty-five thousand dollars, or both;

35 (ii) Any other counterfeit substance classified in Schedule
36 I, II or III is guilty of a felony and, upon conviction, may be
37 imprisoned in the state correctional facility for not less than
38 one year nor more than five years, or fined not more than
39 fifteen thousand dollars, or both;

40 (iii) A counterfeit substance classified in Schedule IV is
41 guilty of a felony and, upon conviction, may be imprisoned
42 in the state correctional facility for not less than one year nor
43 more than three years, or fined not more than ten thousand
44 dollars, or both;

45 (iv) A counterfeit substance classified in Schedule V is
46 guilty of a misdemeanor and, upon conviction, may be
47 confined in jail for not less than six months nor more than
48 one year, or fined not more than five thousand dollars, or
49 both: *Provided*, That for offenses relating to any substance
50 classified as Schedule V in article ten of this chapter, the
51 penalties established in said article apply.

52 (c) It is unlawful for any person knowingly or
53 intentionally to possess a controlled substance unless the
54 substance was obtained directly from, or pursuant to, a valid
55 prescription or order of a practitioner while acting in the
56 course of his professional practice, or except as otherwise
57 authorized by this act. Any person who violates this
58 subsection is guilty of a misdemeanor, and disposition may
59 be made under section four hundred seven of this article,
60 subject to the limitations specified in said section, or upon
61 conviction, such person may be confined in jail not less than
62 ninety days nor more than six months, or fined not more than
63 one thousand dollars, or both: *Provided*, That notwithstanding

64 any other provision of this act to the contrary, any first offense
65 for possession of Synthetic Cannabinoids as defined by
66 subdivision (32) subsection, (d), section 101, article 1 of this
67 chapter; 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-
68 methylenedioxypropylvalerone and/or mephedrone as defined in
69 subsection (f), section 101, article 1 of this chapter; or less than
70 15 grams of marijuana, shall be disposed of under said section.

71 (d) It is unlawful for any person knowingly or
72 intentionally:

73 (1) To create, distribute or deliver, or possess with intent
74 to distribute or deliver, an imitation controlled substance; or

75 (2) To create, possess or sell or otherwise transfer any
76 equipment with the intent that such equipment shall be used
77 to apply a trademark, trade name, or other identifying mark,
78 imprint, number or device, or any likeness thereof, upon a
79 counterfeit substance, an imitation controlled substance, or
80 the container or label of a counterfeit substance or an
81 imitation controlled substance.

82 (3) Any person who violates this subsection is guilty of a
83 misdemeanor and, upon conviction, may be imprisoned in jail
84 for not less than six months nor more than one year, or fined not
85 more than five thousand dollars, or both. Any person being
86 eighteen years old or more who violates subdivision (1) of this
87 subsection and, in so doing, distributes or delivers an imitation
88 controlled substance to a minor child who is at least three years
89 younger than such person is guilty of a felony and, upon
90 conviction, may be imprisoned in the state correctional facility
91 for not less than one year nor more than three years, or fined not
92 more than ten thousand dollars, or both.

93 (4) The provisions of subdivision (1) of this subsection
94 shall not apply to a practitioner who administers or dispenses
95 a placebo.

CHAPTER 30

**(Com. Sub. for H. B. 3205 - By Delegates
Boggs and Swartzmiller)**

[Passed March 9, 2011; in effect from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §31-20-5d of the Code of West Virginia, 1931, as amended, relating to providing persons convicted of a criminal offense and sentenced to confinement in a regional jail a reduction in sentence for successful completion of education and rehabilitation programs; increasing the time permitted by a sentence reduction from one day to five days per program; adding an alcohol abuse program to the programs offered; increasing the total time permitted by sentence reduction to thirty days; and establishing an enrollment fee for each program.

Be it enacted by the Legislature of West Virginia:

That §31-20-5d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND
CORRECTIONAL FACILITY
AUTHORITY.**

§31-20-5d. Good time credit.

- 1 (a) Any person convicted of a criminal offense and
- 2 sentenced to confinement in a regional jail is to be granted

3 reduction of his or her sentence for good conduct in
4 accordance with this section.

5 (b) The reduction of sentence or good time is to be
6 deducted from the fixed term of determinate sentences. An
7 inmate under two or more consecutive sentences is allowed
8 good time as if the several sentences, when the maximum
9 terms thereof are added together, were all one sentence.

10 (c) Every inmate sentenced to a regional jail for a term of
11 confinement exceeding six months who, in the judgment of
12 the administrator of the regional jail facility, faithfully
13 complies with all rules of the regional jail during his or her
14 term of confinement is entitled to a deduction of five days
15 from each month of his or her sentence. No inmate may be
16 granted any good time under the provisions of this section for
17 time spent on bond or for time served on parole or in any
18 other status in which he or she is not physically incarcerated.

19 (d) Each inmate sentenced to a term of confinement in a
20 regional jail facility who participates in a general equivalency
21 diploma program is to be granted three days of good time for
22 the completion of each educational literacy level, as
23 demonstrated by achieving a passing score on standardized
24 tests required by the department of education, and ten days of
25 good time for completion of the requirements for a general
26 equivalency diploma or high school diploma.

27 (e) Each inmate sentenced to a term of confinement in a
28 regional jail in excess of six months shall be granted five
29 days of good time for successful completion for each of the
30 following rehabilitation programs: Domestic violence,
31 parenting, substance abuse, life skills, alcohol abuse, and
32 anger management or any special rehabilitation or
33 educational program designated by the executive director. A
34 maximum of thirty days good time shall be granted for
35 successful completion of all six programs. The fee for each

36 class is \$25 which is due upon enrollment. If an inmate is
37 unable to pay a fee or fees in full at the time of enrollment, it
38 may be paid by deductions from his or her inmate trust
39 account, subject to the provisions of subsection (f), section
40 thirty-one of this article. No more than one half of the
41 amount in the inmate trust account during any one week
42 period may be so deducted.

43 (f) The administrator of a regional jail facility may, with
44 the approval of the Governor, allow extra good time for
45 inmates who perform exceptional work or service.

46 (g) The Regional Jail and Correctional Facility Authority
47 shall promulgate disciplinary rules for the regional jail
48 facilities. The rules are to describe prohibited acts,
49 procedures for charging individual inmates for violations of
50 the rules and for determining the guilt or innocence of
51 inmates charged with the violations, and sanctions that may
52 be imposed for the violations. For each violation by an
53 inmate, any part or all of the good time that has been granted
54 to the inmate may be forfeited and revoked by the
55 administrator of the regional jail facility. The administrator,
56 when appropriate and with approval of the executive director
57 may restore any good time forfeited for a violation of the
58 rules promulgated or adopted pursuant to this subsection.

59 (h) Each inmate sentenced to a term of confinement in a
60 regional jail in excess of six months shall, within seventy-two
61 hours of being received into a regional jail, be given a copy
62 of the disciplinary rules, a statement setting forth the term or
63 length of his or her sentence or sentences, and the time of his
64 or her minimum discharge.

CHAPTER 31

**(Com. Sub. for S. B. 96 - By Senators Laird,
Miller, Plymale, Browning, Unger and D. Facemire)**

[Passed March 10, 2011; in effect July 1, 2011.]

[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §7-7-2, §7-7-3, §7-7-4, §7-7-4a, §7-7-6b, §7-7-6d, §7-7-7, §7-7-7a, §7-7-9, §7-7-11, §7-7-12, §7-7-13, §7-7-14, §7-7-15, §7-7-16, §7-7-16a and §7-7-20 of the Code of West Virginia, 1931, as amended, all relating generally to eliminating outmoded language concerning compensation of county elected officials by certain county classes; repealing the requirement that the compensation of certain county employees be in compliance with the Economic Stabilization Act of 1970; transferring some training program responsibilities and valuation classification of property responsibilities from the State Tax Commissioner to the State Auditor in accordance with existing code provisions; authorizing the State Tax Commissioner and State Auditor to establish training programs for certain employees; eliminating language regarding the transition from part-time to full-time prosecutors inconsistent with other code provisions; removing the limitations on food, lodging, registration fees and mileage on authorized training; eliminating the outdated property valuations used to determine the compensation of elected county officials; permitting a county sheriff to turn over an impounded dog to the local humane society instead of killing it; eliminating references to county positions that no longer exist; and removing the limitation of the costs for the housing and feeding of prisoners in counties having a population of thirty thousand or less.

Be it enacted by the Legislature of West Virginia:

That §7-7-2, §7-7-3, §7-7-4, §7-7-4a, §7-7-6b, §7-7-6d, §7-7-7, §7-7-7a, §7-7-9, §7-7-11, §7-7-12, §7-7-13, §7-7-14, §7-7-15, §7-7-16, §7-7-16a and §7-7-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of two hundred thousand.

1 (a) There is hereby established county in-service training
2 programs as hereinafter set forth.

3 (b) The Attorney General is hereby authorized and
4 directed to establish such in-service training programs as in
5 his or her opinion will do most to assist the prosecuting
6 attorneys in the performance of their duties. The Attorney
7 General is authorized to accept any federal aid which may be
8 made available or any financial assistance which may be
9 available from any private nonprofit organization for the
10 purposes of this section. The prosecuting attorney in any
11 county having a population in excess of two hundred
12 thousand shall also discharge the additional duties imposed
13 upon him or her by the provisions of section thirteen-a,
14 article five, chapter forty-nine of this code.

15 (c) The State Auditor is hereby authorized and directed
16 to establish such in-service training programs for county
17 commissioners, county clerks, sheriffs and their assistants
18 and employees as in his or her opinion will do most to
19 modernize and improve the services of their respective
20 offices. The State Auditor in conjunction with the West
21 Virginia Supreme Court of Appeals is authorized and
22 directed to establish such in-service training programs for

23 circuit clerks and their assistants and employees. The State
 24 Tax Commissioner is authorized and directed to establish
 25 such in-service training programs for assessors and their
 26 assistants and employees. The State Tax Commissioner,
 27 State Auditor and the West Virginia Supreme Court of
 28 Appeals are authorized to accept any federal aid which may
 29 be made available or any financial assistance which may be
 30 available from any private nonprofit organization for the
 31 purpose of this article.

32 (d) Each of the county officials mentioned in this section,
 33 and, at is or her option, one or more of his or her assistants,
 34 deputies and employees, shall participate in the programs
 35 established under this section.

36 (e) The county commission is authorized and directed to
 37 expend funds for the purpose of reimbursing such officials
 38 and employees for the actual amount expended by them for
 39 food, lodging and registration while in attendance at
 40 authorized training for the purpose of this section.

**§7-7-3. Classification of counties for purpose of determining
 compensation of elected county officials.**

1 (a) Effective July 1, 1996, and thereafter, for the purpose
 2 of determining the compensation of elected county officials,
 3 the counties of the State of West Virginia will be grouped
 4 into ten classes based on their assessed valuation of property,
 5 all classes. These ten classes and the minimum and
 6 maximum valuation of property, all classes, established to
 7 determine the classification of each county are as follows:

8 9		Minimum Assessed Valuation of Property	Maximum Assessed Valuation of Property
10	Class	All Classes	All Classes
11	Class I	\$ 2,000,000,000	No Limit
12	Class II	\$ 1,500,000,000	\$ 1,999,999,999

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COUNTIES

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13	Class III	\$ 1,000,000,000	\$ 1,499,999,999
14	Class IV	\$ 700,000,000	\$ 999,999,999
15	Class V	\$ 600,000,000	\$ 699,999,999
16	Class VI	\$ 500,000,000	\$ 599,999,999
17	Class VII	\$ 400,000,000	\$ 499,999,999
18	Class VIII	\$ 300,000,000	\$ 399,999,999
19	Class IX	\$ 200,000,000	\$ 299,999,999
20	Class X	\$-0-	\$ 199,999,999

21 (b) The assessed valuation of property, all classes, that
22 shall be used as the base to determine the class of a county
23 shall be the assessed valuation of property, all classes, of the
24 county as certified by the county assessor, State Auditor and
25 county clerk prior to March 29, 1996.

26 (c) Prior to March 29, 1998, and each second year
27 thereafter, the county commission of each county, shall
28 determine if the assessed valuation of property, all classes, of
29 the county, as certified by the county assessor, State Auditor
30 and county clerk is within the minimum and maximum limits
31 of a class above or below the class in which the county then
32 is. If the county commission so determines, it shall record
33 the new classification of the county with the State Auditor
34 and State Tax Commissioner and record its action on its
35 county commission record.

36 (d) The classification of each county shall be subject to
37 review by State Auditor. He or she shall determine if the
38 classification of each county is correct based on the final
39 assessed valuation of property, all classes, certified to him or
40 her by the county assessor, State Auditor and county clerk.
41 If he or she finds that a county is incorrectly classified, he or
42 she shall notify the county commission of that county
43 promptly of his or her finding and in any case shall notify the
44 county prior to June 30 of that current fiscal year. Any
45 county commission so notified shall correct its classification
46 immediately and make any necessary corrections in the
47 salaries of its elected county officials for the next fiscal year.

48 (e) Notwithstanding the provisions of this article,
49 whenever any other provision of this code refers to
50 classifications of counties for purposes of imposing any right,
51 duty or responsibility, the classification system set forth in
52 subsection (a) of this section shall be utilized for determining
53 the classification of a particular county.

**§7-7-4. Compensation of elected county officials and county
commissioners for each class of county; effective
date.**

1 (1) The increased salaries to be paid to the county
2 commissioners and the other elected county officials
3 described in this subsection on and after July 1, 2006, are set
4 out in subdivisions (5) and (7) of this subsection. Every
5 county commissioner and elected county official in each
6 county, whose term of office commenced prior to or on or
7 after July 1, 2006, shall receive the same annual salary by
8 virtue of legislative findings of extra duties as set forth in
9 section one of this article.

10 (2) Before the increased salaries, as set out in
11 subdivisions (5) and (7) of this subsection, are paid to the
12 county commissioners and the elected county officials, the
13 following requirements must be met:

14 (A) The Auditor has certified that the proposed annual
15 county budget for the fiscal year beginning the first days of
16 July, 2006, has increased over the previous fiscal year in an
17 amount sufficient for the payment of the increase in the
18 salaries, set out in subdivisions (5) and (7) of this subsection,
19 and the related employment taxes: *Provided*, That the
20 Auditor may not approve the budget certification for any
21 proposed annual county budget containing anticipated
22 receipts which are unreasonably greater or lesser than that of
23 the previous year. For purposes of this subdivision, the term
24 "receipts" does not include unencumbered fund balance or
25 federal or state grants; and

26 (B) Each county commissioner or other elected official
 27 described in this subsection in office on the effective date of
 28 the increased salaries provided by this subsection who desires
 29 to receive the increased salary has prior to that date filed in
 30 the office of the clerk of the county commission his or her
 31 written agreement to accept the salary increase. The salary
 32 for the person who holds the office of county commissioner
 33 or other elected official described in this subsection who fails
 34 to file the written agreement as required by this paragraph
 35 shall be the salary for that office in effect immediately prior
 36 to the effective date of the increased salaries provided by this
 37 subsection until the person vacates the office or his or her
 38 term of office expires, whichever first occurs.

39 (3) If there is an insufficient projected increase in
 40 revenues to pay the increased salaries and the related
 41 employment taxes, then the salaries of that county's elected
 42 officials and commissioners shall remain at the level in effect
 43 at the time certification was sought.

44 (4) In any county having a tribunal in lieu of a county
 45 commission, the county commissioners of that county may be
 46 paid less than the minimum salary limits of the county
 47 commission for that particular class of the county.

48 (5) COUNTY COMMISSIONERS

49	Class I	\$36,960
50	Class II	\$36,300
51	Class III	\$35,640
52	Class IV	\$34,980
53	Class V	\$34,320
54	Class VI	\$28,380
55	Class VII	\$27,720
56	Class VIII	\$25,080
57	Class IX	\$24,420
58	Class X	\$19,800

59 (6) For the purpose of determining the salaries to be paid
 60 to the elected county officials of each county, the salaries for
 61 each county office by class, set out in subdivision (7) of this
 62 subsection, are established and shall be used by each county
 63 commission in determining the salaries of each of their
 64 county officials other than salaries of members of the county
 65 commission.

66 (7) OTHER ELECTED OFFICIALS

		County	Circuit	Prosecuting
	Sheriff	Clerk	Clerk	Assessor Attorney
69	Class I	\$44,880	\$55,440	\$55,440 \$44,880 \$ 96,600
70	Class II	\$44,220	\$54,780	\$54,780 \$44,220 \$ 94,400
71	Class III	\$43,890	\$53,460	\$53,460 \$43,890 \$ 92,200
72	Class IV	\$43,560	\$53,154	\$53,154 \$43,560 \$ 90,000
73	Class V	\$43,230	\$52,800	\$52,800 \$43,230 \$ 87,800
74	Class VI	\$42,900	\$49,500	\$49,500 \$42,900 \$ 59,400
75	Class VII	\$42,570	\$48,840	\$48,840 \$42,570 \$ 56,760
76	Class VIII	\$42,240	\$48,180	\$48,180 \$42,240 \$ 54,120
77	Class IX	\$41,910	\$47,520	\$47,520 \$41,910 \$ 50,160
78	Class X	\$38,280	\$42,240	\$42,240 \$38,280 \$ 46,200

79 (8) Any county clerk, circuit clerk, county assessor or
 80 sheriff of a Class I through Class V county, inclusive, any
 81 assessor or any sheriff of a Class VI through Class IX county,
 82 inclusive, shall devote full-time to his or her public duties to
 83 the exclusion of any other employment: *Provided*, That any
 84 public official, whose term of office begins when his or her
 85 county's classification imposes no restriction on his or her
 86 outside activities, may not be restricted on his or her outside
 87 activities during the remainder of the term for which he or
 88 she is elected.

§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.

1 (a) On or before the first day of January, two thousand
2 nine, a county may not have a part-time prosecutor. The
3 county commissions of counties in Class VI through X shall
4 then compensate all prosecuting attorneys that have changed
5 to full-time by virtue of this section at the same rate of
6 compensation established for a prosecuting attorney in a
7 Class V county: *Provided*, That, upon mutual agreement of
8 the prosecuting attorney and the county commission, the
9 prosecuting attorney may choose to remain a part-time
10 prosecuting attorney.

11 (b) If, after the first day of January, two thousand nine,
12 during the course of a term of office, pursuant to subsection
13 (a) of this section, any prosecutor who becomes full-time or
14 chooses to remain part-time who believes that the
15 responsibilities of his or her office either no longer requires
16 a full-time position or believes that the duties of the part-time
17 position have become full-time, may, by mutual agreement
18 with the county commission, either return to part-time status
19 or change to full-time status: *Provided*, That, if the decision
20 to change to full-time or part-time status is made during an
21 election year, the decision must be by mutual agreement
22 between the county commission and the prosecutor-elect:
23 *Provided, however*, That any prosecutor who returns to part-
24 time status shall, thereafter, be compensated at the rate of
25 compensation set forth in section four of this article for a
26 prosecuting attorney of his or her class county and any
27 prosecutor that changes to full-time status shall, thereafter, be
28 compensated at the same rate of compensation established for
29 a prosecuting attorney in a Class V county.

30 (c) If, after the first day of January, two thousand nine,
31 any prosecutor or prosecutor-elect desires to change to full-
32 time status and the county commission objects to such
33 change due to an alleged financial condition of the county,
34 then either party may request the State Auditor's office to

35 examine the county's financial condition and certify whether
36 or not there are sufficient funds to support a full-time
37 position. The State Auditor shall then, within ninety days of
38 such request, certify whether or not there are sufficient funds
39 available to support a full-time prosecutor in the county. If
40 the State Auditor certifies that there are sufficient funds
41 available, then the prosecutor or prosecutor elect must be
42 changed to full-time status and be compensated at the same
43 rate of pay as a prosecutor in a Class V county.

44 (d) Nothing in this section may be construed to prohibit
45 a part-time prosecuting attorney from remaining part-time
46 with the mutual agreement of the county commission.

§7-7-6b. Additional compensation of assessors according to county classification.

1 For the purpose of determining the additional
2 compensation to be paid to the county assessor of each
3 county for the additional duties provided by section six-a of
4 this article, the following compensations for each county
5 assessor by class, as provided in section three of this article,
6 are hereby established and shall be used by each county
7 commission in determining the compensation of each county
8 assessor; for assessors in Class I - V counties, inclusive,
9 \$15,000; for assessors in Class VI and VII counties, \$10,000;
10 for assessors in Class VIII and IX counties, \$9,000; for
11 assessors in Class X counties, \$6,500.

§7-7-6d. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.

1 (a) It shall be the duty of the county assessor and the
2 assessor's deputies of each county within the state, at the
3 time they are making assessment of the personal property
4 within such county, to assess and collect a head tax of \$1 on
5 each male or spayed female dog and of \$2 on each unspayed
6 female dog; and in addition to the above, the assessor and the
7 assessor's deputies shall have the further duty of collecting

8 any such head tax on dogs as may be levied by the
9 ordinances of each and every municipality within the county.
10 In the event that the owner, keeper, or person having in his or
11 her possession or allowing to remain on any premises under
12 his or her control any dog above the age of six months, shall
13 refuse or fail to pay such tax, when the same is assessed or
14 within fifteen days thereafter, to the assessor or deputy
15 assessor, then such assessor or deputy assessor shall certify
16 such tax to the county dog warden; if there be no county dog
17 warden he or she shall certify such tax to the county sheriff,
18 who shall take charge of the dog for which the tax is
19 delinquent and impound the same for a period of fifteen days,
20 for which service he or she shall be allowed a fee of \$1.50 to
21 be charged against such delinquent taxpayer in addition to the
22 taxes herein provided for. In case the tax and impounding
23 charge herein provided for shall not have been paid within
24 the period of fifteen days, then the sheriff may sell the
25 impounded dog and deduct the impounding charge and the
26 delinquent tax from the amount received therefor, and return
27 the balance, if any, to the delinquent taxpayer. Should the
28 sheriff fail to sell the dog so impounded within the time
29 specified herein, he or she shall turn the animal over to the
30 local humane society or similar organization.

31 (b) At the same time as the head tax is assessed, the
32 assessor and the assessor's deputies shall, on the forms
33 prescribed under section four, article twenty, chapter nineteen
34 of this code, take down the age, sex, color, character of hair
35 (long or short) and breed (if known) and the name and
36 address of the owner, keeper or harbinger thereof. When the
37 head tax, and extra charges, if any, are paid, the officer to
38 whom payment is made shall issue a certificate of registration
39 and a registration tag for such dog.

40 (c) In addition to the assessment and registration above
41 provided for, whenever a dog either is acquired or becomes
42 six months of age after the assessment of the personal
43 property of the owner, keeper or harbinger thereof, the said

44 owner, keeper or harborer of said dog shall, within ten days
45 after the acquisition or maturation, register the said dog with
46 the assessor, and pay the head tax thereon unless the prior
47 owner, keeper or harborer paid the head tax.

48 (d) All certificates of registration and registration tags
49 issued pursuant to the provisions of this section shall be
50 issued for the fiscal year and shall be valid from the date on
51 which issued until June 30 of that fiscal year, or until reissued
52 by the assessor or the assessor's deputy in the regular
53 performance of his or her duties, but in no case shall previous
54 registration tags be valid after September 30 of the next
55 ensuing fiscal year.

56 (e) The assessor collecting the head tax on dogs shall be
57 allowed a commission of ten percent upon all such taxes
58 collected by the assessor and shall turn in to the county
59 treasurer ninety percent of such taxes so collected, as are
60 levied by this section; and the assessor shall turn over to the
61 treasurer or other proper officer of each and every
62 municipality within the county ninety percent of such taxes
63 levied by the ordinances of such municipality. All such dog
64 taxes, except those belonging to municipalities, shall be
65 accredited to the dog and kennel fund provided for in section
66 ten, article twenty, chapter nineteen of this code. Such dog
67 taxes as are collected for and turned over to municipalities
68 shall be deposited by the proper officer of such municipality
69 to such fund and shall be expended in such manner as the law
70 of such municipality may provide. All taxes on dogs not
71 collected by the assessor shall be collected by the regular tax
72 collecting officer of the county and placed to the credit of the
73 dog and kennel fund.

**§7-7-7. County assistants, deputies and employees; their
number and compensation; county budget.**

1 (a) The county clerk, circuit clerk, sheriff, county
2 assessor and prosecuting attorney, by and with the advice and

3 consent of the county commission, may appoint and employ,
4 to assist them in the discharge of their official duties for and
5 during their respective terms of office, assistants, deputies
6 and employees. The county clerk may designate one or more
7 of his or her assistants as responsible for all probate matters.

8 (b) The county clerk, circuit clerk, sheriff, county
9 assessor and prosecuting attorney shall, prior to March 2 of
10 each year, file with the county commission a detailed request
11 for appropriations for anticipated or expected expenditures
12 for their respective offices, including the compensation for
13 their assistants, deputies and employees, for the ensuing
14 fiscal year.

15 (c) The county commission shall, prior to March 29 of
16 each year by order fix the total amount of money to be
17 expended by the county for the ensuing fiscal year, which
18 amount shall include the compensation of county assistants,
19 deputies and employees. Each county commission shall enter
20 its order upon its county commission record.

21 (d) The county clerk, circuit clerk, sheriff, county
22 assessor and prosecuting attorney shall then fix the
23 compensation of their assistants, deputies and employees
24 based on the total amount of money designated for
25 expenditure by their respective offices by the county
26 commission and the amount expended shall not exceed the
27 total expenditure designated by the county commission for
28 each office.

29 (e) The county officials, in fixing the individual
30 compensation of their assistants, deputies and employees and
31 the county commission in fixing the total amount of money
32 to be expended by the county, shall give due consideration to
33 the duties, responsibilities and work required of the
34 assistants, deputies and employees and their compensation
35 shall be reasonable and proper.

36 (f) After the county commission has fixed the total
37 amount of money to be expended by the county for the
38 ensuing fiscal year and after each county official has fixed
39 the compensation of each of his or her assistants, deputies
40 and employees, as provided in this section, each county
41 official shall file prior to June 30, with the clerk of the county
42 commission, a budget statement for the ensuing fiscal year
43 setting forth the name, or the position designation if then
44 vacant, of each of his or her assistants, deputies and
45 employees, the period of time for which each is employed, or
46 to be employed if the position is then vacant, and his or her
47 monthly or semimonthly compensation.

48 (g) All budget statements required to be filed by this
49 section shall be verified by an affidavit by the county official
50 making them. Among other things contained in the affidavit
51 shall be the statement that the amounts shown in the budget
52 statement are the amounts actually paid or intended to be paid
53 to the assistants, deputies and employees without rebate, and
54 without any agreement, understanding or expectation that any
55 part thereof shall be repaid to him or her, and that, prior to
56 the time the affidavit is made, nothing has been paid or
57 promised him or her on that account, and that if he or she
58 shall thereafter receive any money, or thing of value, on
59 account thereof, he or she will account for and pay the same
60 to the county. Until the statements required by this section
61 have been filed, no allowance or payments shall be made to
62 any county official or their assistants, deputies and
63 employees.

64 (h) Each county official named in this section shall have
65 the authority to discharge any of his or her assistants,
66 deputies or employees by filing with the clerk of the county
67 commission a discharge statement specifying the discharge
68 action: *Provided*, That no deputy sheriff appointed pursuant
69 to the provisions of article fourteen, chapter seven of this
70 code, shall be discharged contrary to the provisions of that
71 article.

§7-7-7a. Limit of budget expenditures.

1 (a) No county clerk, circuit clerk, sheriff, county assessor
2 or prosecuting attorney may, without the approval of the
3 county commission, spend or obligate, before the end of the
4 calendar year, more than fifty percent of the funds allocated
5 for his or her office in the fiscal year budget, in any fiscal
6 year where the person holding the office is leaving office due
7 to either resignation or the results of an election.

8 (b) As used in subsection (a) of this section, “spend or
9 obligate” includes, but is not limited to, increasing employee
10 salaries to a level that would create a deficit in the budget if
11 paid during the remainder of the fiscal year in addition to
12 other anticipated expenditures.

§7-7-9. Procedure for payment of compensation.

1 (a) The compensation of the county clerk, circuit clerk,
2 sheriff, county assessor, prosecuting attorney, and their
3 assistants, deputies and employees shall be paid monthly or
4 semimonthly by the county court, which compensation shall
5 be paid out of the county treasury in the manner prescribed
6 by law.

7 (b) The county commission, after the filing of the budget
8 statement specified in section seven of this article, may, by
9 order of record, authorize and order a draft on the county
10 treasurer, payable out of the general county fund, to be drawn
11 in favor of the county official, assistant, deputy or employee
12 named in this statement, in payment of the compensation to
13 which the person is entitled.

14 (c) The draft shall not be issued to the county official,
15 assistant, deputy or employee until the proper county official
16 has filed a detailed monthly or semimonthly statement with
17 the county treasurer and has filed with the county clerk a
18 duplicate copy of the monthly or semimonthly statement,

19 together with a receipt from the county treasurer, showing
20 that the person to be paid has paid into the county treasury all
21 moneys belonging to the county that have been collected by
22 him or her during that pay period as shown by the monthly or
23 semimonthly statement.

24 (d) When the order for the draft has been entered of
25 record, the president and clerk of the county court shall be
26 authorized to issue and approve by their signature the draft.

§7-7-11. Illegal orders for compensation.

1 If any clerk shall issue and deliver a draft to any county
2 clerk, circuit clerk, sheriff, county assessor, prosecuting
3 attorney, or any of their assistants, deputies or employees, in
4 payment of their compensation, without all the applicable
5 requirements of this article being complied with, the draft so
6 issued and delivered shall be illegal and invalid. The clerk
7 and the sureties on his or her bond shall be liable to the
8 county commission of his or her county for the payment
9 thereof.

§7-7-12. Sharing compensation prohibited.

1 No county official shall receive or be paid, directly or
2 indirectly, any part of the compensation of any assistant,
3 deputy or employee, or any fee or reward for appointing him
4 or her to his or her position. No member of a county
5 commission shall receive or be paid, directly or indirectly,
6 any part of the compensation of any other county officer
7 named in this article, or of any county assistant, deputy or
8 employee. If any county commissioner or county official
9 violates the provisions of this section, he or she shall be
10 guilty of a misdemeanor, and, upon conviction thereof, shall
11 be fined not more than \$500, or imprisoned in the county jail
12 not more than one year, or both fined and imprisoned. Any
13 county commissioner or county official so convicted shall
14 forfeit his or her office.

§7-7-13. Allowance for expenses of sheriff.

1 (a) The county commission of every county shall allow
2 the actual and necessary expenses incurred by the sheriff in
3 the discharge of his or her duties including, but not limited to,
4 those incurred in arresting, pursuing or transporting persons
5 accused or convicted of crimes and offenses; in the cost of
6 law-enforcement and safety equipment; in conveying or
7 transporting a prisoner from and to jail to participate in court
8 proceedings; and in conveying or transferring any person to
9 or from any state institution where he or she may be
10 committed from his or her county, where the sheriff is
11 authorized to convey or transfer the person: *Provided*, That
12 the law-enforcement agency that places a person under arrest
13 shall be responsible for the person's initial transportation to
14 a regional or county jail, except where there is a preexisting
15 agreement between the county and the political body the
16 other law-enforcement agency serves. Any person
17 transported to the regional jail as provided for by the
18 provisions of this section shall, upon conviction for the
19 offense causing his or her incarceration, pay the reasonable
20 costs of the transportation. The money is to be collected by
21 the court of conviction at the current mileage reimbursement
22 rate. The county commission shall allow the actual and
23 necessary expenses incurred in serving summonses, notices
24 or other official papers in connection with the sheriff's office.

25 (b) Every sheriff shall file monthly, under oath, an
26 accurate account of all the actual and necessary expenses
27 incurred by him or her, his or her deputies, assistants and
28 employees in the performance and discharge of their official
29 duties supported by verified accounts before reimbursement
30 thereof shall be allowed by the county commission.
31 Reimbursement, properly allowed, shall be made from the
32 general county fund.

§7-7-14. Training of sheriffs and deputies; payment of expenses thereof by county commission.

1 The county commission of each county is authorized, at
2 its discretion, to expend from the general county fund, upon
3 request and requisition by the sheriff of the county, the
4 necessary and proper travel expenses and tuition expenses for
5 the training of the sheriff and his or her deputies of the
6 county in the performance of their duties, as sheriff and
7 deputy.

§7-7-15. Allowance for expenses of prosecuting attorney.

1 In addition to his or her compensation, the prosecuting
2 attorney and his or her assistants shall be reimbursed for
3 actual traveling expenses within the state in the performance
4 of their official duties, and when out of the state for the
5 purpose of taking depositions in cases in which other counsel
6 is not employed by the court under section one, article three,
7 chapter sixty-two of this code, which expenses shall be duly
8 itemized and verified, and shall, if found correct, be allowed
9 by the county commission and be paid monthly out of the
10 general county fund.

§7-7-16. Mileage allowance for county officials and employees.

1 (a) The county commission of each county shall allow to
2 each county official and to their deputies, assistants and
3 employees, when they are required to drive their personally
4 owned vehicles in the actual performance and discharge of
5 their official duties, reimbursement at a uniform rate for all
6 individuals as approved by the county commission.

7 (b) Every county official shall file monthly, under oath,
8 a full and accurate account of all the actual mileage driven by
9 him or her, his or her deputies, assistants and employees, in
10 the performance and discharge of their official duties
11 supported by verified accounts before reimbursement thereof

12 shall be allowed by the county commission. Reimbursement,
13 properly allowed, shall be made from the general county
14 fund.

§7-7-16a. Motor vehicles owned by the county.

1 The sheriff of each county and his or her deputies who
2 are engaged in law-enforcement activities may, in the
3 discretion of the sheriff, use a motor vehicle owned by the
4 county to travel from his or her residence to his or her
5 workplace and return. Any other county official or employee
6 may, or may not, in the discretion of the county commission,
7 be furnished with the use of a motor vehicle owned by the
8 county to travel from his or her residence to his or her
9 workplace and return: *Provided*, That such usage is subject
10 to the supervision of said sheriff or commission and is
11 directly connected with and required by the nature and in the
12 performance of such sheriff's, deputy's, county official or
13 employee's duties and responsibilities.

§7-7-20. Penalties.

1 If any county clerk, circuit clerk, sheriff, county assessor
2 or prosecuting attorney fail to file the detailed request for
3 appropriations or the budget statement as provided in section
4 seven of this article or fail to file the monthly or semimonthly
5 statement as provided in section nine of this article or fail to
6 file the statement of expenditures as provided for in section
7 seventeen of this article, or if any county clerk, circuit clerk,
8 sheriff, county assessor, prosecuting attorney, their assistants,
9 deputies or employees, fail to comply with any of the
10 requirements provided in this article, he or she shall, except
11 where another penalty is prescribed, be guilty of a
12 misdemeanor, and, upon conviction thereof, shall be fined
13 not less than \$50 nor more than \$100, or confined in jail not
14 less than thirty days nor more than six months, or both fined
15 and confined.



CHAPTER 32

**(Com. Sub. for H. B. 2766 - By Delegates Pethel
Canterbury, Givens, Ennis, Guthrie and D. Poling)**

[Passed March 8, 2011; in effect from passage.]
[Approved by the Governor on March 17, 2011.]

AN ACT to amend and reenact §7-14D-7 of the Code of West Virginia, 1931, as amended, relating to increasing the maximum contribution rate to be paid by the county commission or concurrent employer.

Be it enacted by the Legislature of West Virginia:

That §7-14D-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM
ACT.**

§7-14D-7. Members' contributions; employer contributions.

- 1 (a) There shall be deducted from the monthly salary of
- 2 each member and paid into the fund an amount equal to eight
- 3 and one-half percent of his or her monthly salary. An
- 4 additional amount shall be paid to the fund by the county
- 5 commission of the county in which the member is employed
- 6 in covered employment in an amount determined by the
- 7 board: *Provided*, That in any year preceding July 1, 2011,
- 8 the total of the contributions provided in this section, to be
- 9 paid by the county commission, may not exceed ten and one-
- 10 half percent of the total payroll for the members in the

11 employ of the county commission: *Provided, however,* That
12 on or after July 1, 2011, the total of the contributions
13 provided in this section, to be paid by the county
14 commission, may not exceed thirteen percent of the total
15 payroll for the members in the employ of the county
16 commission. If the board finds that the benefits provided by
17 this article can be actually funded with a lesser contribution,
18 then the board shall reduce the required member or employer
19 contributions or both. The sums withheld each calendar
20 month shall be paid to the fund no later than fifteen days
21 following the end of the calendar month.

22 (b) Any active member who has concurrent employment in
23 an additional job or jobs and the additional employment requires
24 the deputy sheriff to be a member of another retirement system
25 which is administered by the Consolidated Public Retirement
26 Board pursuant to article ten-d, chapter five of this code shall
27 make an additional contribution to the fund of eight and one-half
28 percent of his or her monthly salary earned from any additional
29 employment which requires the deputy sheriff to be a member
30 of another retirement which is administered by the Consolidated
31 Public Retirement Board pursuant to article ten-d, chapter five
32 of this code. An additional amount shall be paid to the fund by
33 the concurrent employer for which the member is employed in
34 an amount determined by the board: *Provided,* That in any year
35 preceding July 1, 2011, the total of the contributions provided in
36 this section, to be paid by the concurrent employer, may not
37 exceed ten and one-half percent of the monthly salary of the
38 employee: *Provided, however,* That on or after July 1, 2011, the
39 total of the contributions provided in this section, to be paid by
40 the concurrent employer, may not exceed thirteen percent of the
41 monthly salary of the employee. If the board finds that the
42 benefits provided by this article can be funded with a lesser
43 contribution, then the board shall reduce the required member or
44 employer contributions or both. The sums withheld each
45 calendar month shall be paid to the fund no later than fifteen
46 days following the end of the calendar month.

47 (c) If any change or employer error in the records of any
48 participating public employer or the retirement system results in
49 any member receiving from the system more or less than he or
50 she would have been entitled to receive had the records been
51 correct, the board shall correct the error, and as far as is
52 practicable shall adjust the payment of the benefit in a manner
53 that the actuarial equivalent of the benefit to which the member
54 was correctly entitled shall be paid. Any employer error
55 resulting in an underpayment to the retirement system may be
56 corrected by the member remitting the required employee
57 contribution and the participating public employer remitting the
58 required employer contribution. Interest shall accumulate in
59 accordance with the retirement board reinstatement interest as
60 established in Legislative Rule 162 CSR 7 and any accumulating
61 interest owed on the employee and employer contributions
62 resulting from the employer error shall be the responsibility of
63 the participating public employer. The participating public
64 employer may remit total payment and the employee reimburse
65 the participating public employer through payroll deduction over
66 a period equivalent to the time period during which the
67 employer error occurred.

CHAPTER 33

**(Com. Sub. for H. B. 3185 - By Delegates
Lawrence and Manchin)**

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §7-20-7a, relating
to impact fees; providing legislative findings; requiring

counties to have an affordable housing component in the county's impact fees ordinance; providing requirements for the affordable housing component; and requiring a vote by the county commission to increase or decrease impact fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-20-7a, to read as follows:

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-7a. Impact fees for affordable housing.

1 (a) The Legislature finds that:

2 (1) There is a lack of affordable housing in counties that
3 impose impact fees because the cost of the fees along with
4 the economic conditions in those counties has resulted in low
5 and moderate income persons, persons on fixed incomes, the
6 elderly and persons with special needs, not being able to
7 obtain safe, decent and affordable housing;

8 (2) A lack of affordable housing affects the ability of a
9 community to develop and maintain strong and stable
10 economies, and impairs the health, stability and self-esteem
11 of individuals and families; and

12 (3) Financing affordable housing particularly in high
13 growth counties is becoming increasingly difficult.

14 For these reasons, it is in the public interest to encourage
15 counties that have imposed impact fees and those considering

16 the imposition of impact fees to fairly assess and discount
17 impact fees so as not to limit safe, decent and affordable
18 housing.

19 (b) On or before July 1, 2012, a county imposing impact
20 fees shall enact an affordable housing component with a
21 discount impact fees schedule, based upon the new homes
22 value compared to the most recent annual single dwelling
23 residential housing index created in section two-b, article
24 one, chapter eleven of this code, to the county's impact fees
25 ordinance. The impact fees schedule shall be updated
26 annually to reflect the changes to the single dwelling
27 residential housing index.

28 (c) The affordable housing component shall:

29 (1) Take into account all the different types of housing,
30 including single family detached, single family attached,
31 duplex, town house, apartment, condominium and
32 manufactured home; and

33 (2) Include a discount for mobile homes, as defined in
34 section one, article one, chapter seventeen-a of this code,
35 based upon the value set out in the National Automobile
36 Dealers Association book.

37 (d) The county commission shall annually approve, by a
38 majority vote, any increase or decrease in the impact fees
39 schedule.

CHAPTER 34

**(Com. Sub. for S. B. 235 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]**

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, all relating to revising the County Economic Opportunity Development District Act generally; defining the term “remediation”; including remediation of landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites as permissible development expenditures for approved projects; changing standard by which the maximum amounts of reserves that may be established in the financing of a project are measured; reducing the amount of capital investment required for project approval; providing that the Development Office cannot approve a project involving remediation unless all development expenditures proposed within a certain time frame result in more than \$25 million in capital investment in the district; changing “ordinance” to “order”; correcting language by changing “municipality” to “county”; providing that the Development Office may not approve a project involving remediation unless the county commission submits clear and convincing information that the proposed remediation expenditures to be financed with bonds or notes do not constitute more than twenty-five percent of a project’s total development expenditures; allowing for minor modifications of

districts without public hearing or approval by the Development Office or the Legislature under certain circumstances; and providing technical and clerical cleanup.

Be it enacted by the Legislature of West Virginia:

That §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-3. Definitions.

1 For purposes of this article, the term:

2 (1) "County commission" means the governing body of
3 a county of this state;

4 (2) "Development expenditures" means payments for
5 governmental functions, programs, activities, facility
6 construction, improvements and other goods and services
7 which a district board is authorized to perform or provide
8 under section five of this article;

9 (3) "District" means an economic opportunity
10 development district created pursuant to this article;

11 (4) "District board" means a district board created
12 pursuant to section ten of this article; and

13 (5) "Eligible property" means any taxable or exempt real
14 property located in a district established pursuant to this
15 article.

16 (6) "Remediation" means measures undertaken to bring
17 about the reconditioning or restoration of property located
18 within the boundaries of an economic opportunity
19 development district that has been affected by exploration,
20 mining, industrial operations or solid waste disposal and
21 which measures, when undertaken, will eliminate or
22 ameliorate the existing state of the property and enable the
23 property to be commercially developed.

**§7-22-4. Authorization to create economic opportunity
development districts.**

1 A county commission may, in accordance with the
2 procedures and subject to the limitations set forth in this
3 article:

4 (1) Create one or more economic opportunity
5 development districts within its county;

6 (2) Provide for the administration and financing of
7 development expenditures within the districts; and

8 (3) Provide for the administration and financing of a
9 continuing program of development expenditures within the
10 districts.

§7-22-5. Development expenditures.

1 Any county commission that has established an economic
2 opportunity development district under this article may make,
3 or authorize to be made by a district board and other public
4 or private parties, development expenditures as will promote
5 the economic vitality of the district and the general welfare
6 of the county, including, but not limited to, expenditures for
7 the following purposes:

8 (1) Beautification of the district by means including
9 landscaping and construction and erection of fountains,

10 shelters, benches, sculptures, signs, lighting, decorations and
11 similar amenities;

12 (2) Provision of special or additional public services such
13 as sanitation, security for persons and property and the
14 construction and maintenance of public facilities, including,
15 but not limited to, sidewalks, parking lots, parking garages
16 and other public areas;

17 (3) Making payments for principal, interest, issuance
18 costs, any of the costs described in section twenty of this
19 article and appropriate reserves for bonds and other
20 instruments and arrangements issued or entered into by the
21 county commission for financing the expenditures of the
22 district described in this section and to otherwise implement
23 the purposes of this article;

24 (4) Providing financial support for public transportation
25 and vehicle parking facilities open to the general public,
26 whether physically situate within the district's boundaries or
27 on adjacent land;

28 (5) Acquiring, building, demolishing, razing,
29 constructing, repairing, reconstructing, refurbishing,
30 renovating, rehabilitating, expanding, altering, otherwise
31 developing, operating and maintaining real property
32 generally, parking facilities, commercial structures and other
33 capital improvements to real property, fixtures and tangible
34 personal property, whether or not physically situate within
35 the district's boundaries: *Provided*, That the expenditure
36 directly benefits the district;

37 (6) Developing plans for the architectural design of the
38 district and portions thereof and developing plans and
39 programs for the future development of the district;

40 (7) Developing, promoting and supporting community
41 events and activities open to the general public that benefit
42 the district;

43 (8) Providing the administrative costs for a district
44 management program;

45 (9) Providing for the usual and customary maintenance
46 and upkeep of all improvements and amenities in the district
47 as are commercially reasonable and necessary to sustain its
48 economic viability on a permanent basis;

49 (10) Providing any other services that the county
50 commission or district board is authorized to perform and
51 which the county commission does not also perform to the
52 same extent on a countywide basis;

53 (11) Making grants to the owners or tenants of economic
54 opportunity development district for the purposes described
55 in this section;

56 (12) Acquiring an interest in any entity or entities that
57 own any portion of the real property situate in the district and
58 contributing capital to any entity or entities;

59 (13) Remediation of publicly or privately owned landfills,
60 former coal or other mining sites, solid waste facilities or
61 hazardous waste sites to facilitate commercial development
62 which would not otherwise be economically feasible; and

63 (14) To do any and all things necessary, desirable or
64 appropriate to carry out and accomplish the purposes of this
65 article notwithstanding any provision of this code to the
66 contrary.

§7-22-7. Application to development office for approval of an economic opportunity development district project.

1 (a) *General.* -- The development office shall receive and
2 act on applications filed with it by county commissions
3 pursuant to section six of this article. Each application must
4 include:

5 (1) A true copy of the notice described in section six of
6 this article;

7 (2) The total cost of the project;

8 (3) A reasonable estimate of the number of months
9 needed to complete the project;

10 (4) A general description of the capital improvements,
11 additional or extended services and other proposed
12 development expenditures to be made in the district as part of
13 the project;

14 (5) A description of the proposed method of financing the
15 development expenditures, together with a description of the
16 reserves to be established for financing ongoing development
17 expenditures necessary to permanently maintain the optimum
18 economic viability of the district following its inception:
19 *Provided*, That the amounts of the reserves may not exceed
20 the amounts that would be required by prevailing commercial
21 capital market considerations;

22 (6) A description of the sources and anticipated amounts
23 of all financing, including, but not limited to, proceeds from
24 the issuance of any bonds or other instruments, revenues
25 from the special district excise tax and enhanced revenues
26 from property taxes and fees;

27 (7) A description of the financial contribution of the
28 county commission to the funding of development
29 expenditures;

30 (8) Identification of any businesses that the county
31 commission expects to relocate their business locations from
32 the district to another place in the state in connection with the
33 establishment of the district or from another place in this state
34 to the district: *Provided*, That for purposes of this article, any
35 entities shall be designated “relocated entities”;

36 (9) Identification of any businesses currently conducting
37 business in the proposed economic opportunity development
38 district that the county commission expects to continue doing
39 business there after the district is created;

40 (10) A good faith estimate of the aggregate amount of
41 consumers sales and service tax that was actually remitted to
42 the Tax Commissioner by all business locations identified as
43 provided in subdivisions (8) and (9) of this subsection with
44 respect to their sales made and services rendered from their
45 then current business locations that will be relocated from, or
46 to, or remain in the district, for the twelve full calendar
47 months next preceding the date of the application: *Provided*,
48 That for purposes of this article, the aggregate amount is
49 designated as “the base tax revenue amount”;

50 (11) A good faith estimate of the gross annual district tax
51 revenue amount;

52 (12) The proposed application of any surplus from all
53 funding sources to further the objectives of this article;

54 (13) The Tax Commissioner’s certification of: (i) The
55 amount of consumers sales and service taxes collected from
56 businesses located in the economic opportunity district
57 during the twelve calendar months preceding the calendar
58 quarter during which the application will be submitted to the
59 development office; (ii) the estimated amount of economic
60 opportunity district excise tax that will be collected during
61 the first twelve months after the month in which the Tax

62 Commissioner would first begin to collect that tax; and (iii)
63 the estimated amount of economic opportunity district excise
64 tax that will be collected during the first thirty-six months
65 after the month in which the Tax Commissioner would first
66 begin to collect that tax; and

67 (14) Any additional information the development office
68 may require.

69 (b) *Review of applications.* -- The development office
70 shall review all project proposals for conformance to
71 statutory and regulatory requirements, the reasonableness of
72 the project's budget and timetable for completion and the
73 following criteria:

74 (1) The quality of the proposed project and how it
75 addresses economic problems in the area in which the project
76 will be located;

77 (2) The merits of the project determined by a cost-benefit
78 analysis that incorporates all costs and benefits, both public
79 and private;

80 (3) Whether the project is supported by significant
81 private sector investment and substantial credible evidence
82 that, but for the existence of sales tax increment financing,
83 the project would not be feasible;

84 (4) Whether the economic opportunity district excise tax
85 dollars will leverage or be the catalyst for the effective use of
86 private, other local government, state or federal funding that
87 is available;

88 (5) Whether there is substantial and credible evidence
89 that the project is likely to be started and completed in a
90 timely fashion;

91 (6) Whether the project will, directly or indirectly,
92 improve the opportunities in the area where the project will
93 be located for the successful establishment or expansion of
94 other industrial or commercial businesses;

95 (7) Whether the project will, directly or indirectly, assist
96 in the creation of additional long-term employment
97 opportunities in the area and the quality of jobs created in all
98 phases of the project, to include, but not be limited to, wages
99 and benefits;

100 (8) Whether the project will fulfill a pressing need for the
101 area, or part of the area, in which the economic opportunity
102 district is located;

103 (9) Whether the county commission has a strategy for
104 economic development in the county and whether the project
105 is consistent with that strategy;

106 (10) Whether the project helps to diversify the local
107 economy;

108 (11) Whether the project is consistent with the goals of
109 this article;

110 (12) Whether the project is economically and fiscally
111 sound using recognized business standards of finance and
112 accounting; and

113 (13) (A) The ability of the county commission and the
114 project developer or project team to carry out the project:
115 *Provided*, That no project may be approved by the
116 development office unless the amount of all development
117 expenditures proposed to be made in the first twenty-four
118 months following the creation of the district results in capital
119 investment of more than \$25 million in the district and the
120 county submits clear and convincing information, to the

121 satisfaction of the development office, that the investment
122 will be made if the development office approves the project
123 and the Legislature authorizes the county commission to levy
124 an excise tax on sales of goods and services made within the
125 economic opportunity district as provided in this article.

126 (B) Notwithstanding any provision of paragraph (A) of
127 this subdivision to the contrary, no project involving
128 remediation may be approved by the Development Office
129 unless the amount of all development expenditures proposed
130 to be made in the first forty-eight months following the
131 creation of the district results in capital investment of more
132 than \$25 million in the district. In addition to the remaining
133 provisions of paragraph (A) of this subdivision the
134 development office may not approve a project involving
135 remediation authorized under section five of this article
136 unless the county commission submits clear and convincing
137 information, to the satisfaction of the development office,
138 that the proposed remediation expenditures to be financed by
139 the issuance of bonds or notes pursuant to section sixteen of
140 this article do not constitute more than twenty-five percent of
141 the total development expenditures associated with the
142 project.

143 (c) *Additional criteria.* -- The development office may
144 establish other criteria for consideration when approving the
145 applications.

146 (d) *Action on the application.* -- The executive director
147 of the development office shall act to approve or not approve
148 any application within thirty days following the receipt of the
149 application or the receipt of any additional information
150 requested by the development office, whichever is the later.

151 (e) *Certification of project.* -- If the executive director of
152 the development office approves a county's economic
153 opportunity district project application, he or she shall issue

154 to the county commission a written certificate evidencing the
155 approval.

156 The certificate shall expressly state a base tax revenue
157 amount, the gross annual district tax revenue amount and the
158 estimated net annual district tax revenue amount which, for
159 purposes of this article, is the difference between the gross
160 annual district tax revenue amount and the base tax revenue
161 amount, all of which the development office has determined
162 with respect to the district's application based on any
163 investigation it considers reasonable and necessary,
164 including, but not limited to, any relevant information the
165 development office requests from the Tax Commissioner and
166 the Tax Commissioner provides to the development office:
167 *Provided*, That in determining the net annual district tax
168 revenue amount, the development office may not use a base
169 tax revenue amount less than that amount certified by the Tax
170 Commissioner but, in lieu of confirmation from the Tax
171 Commissioner of the gross annual district tax revenue
172 amount, the development office may use the estimate of the
173 gross annual district tax revenue amount provided by the
174 county commission pursuant to subsection (a) of this section.

175 (f) *Certification of enlargement of geographic*
176 *boundaries of previously certified district.* -- If the executive
177 director of the development office approves a county's
178 economic opportunity district project application to expand
179 the geographic boundaries of a previously certified district,
180 he or she shall issue to the county commission a written
181 certificate evidencing the approval.

182 The certificate shall expressly state a base tax revenue
183 amount, the gross annual district tax revenue amount and the
184 estimated net annual district tax revenue amount which, for
185 purposes of this article, is the difference between the gross
186 annual district tax revenue amount and the base tax revenue
187 amount, all of which the development office has determined

188 with respect to the district's application based on any
189 investigation it considers reasonable and necessary,
190 including, but not limited to, any relevant information the
191 development office requests from the tax commissioner and
192 the tax commissioner provides to the development office:
193 *Provided*, That in determining the net annual district tax
194 revenue amount, the development office may not use a base
195 tax revenue amount less than that amount certified by the tax
196 commissioner but, in lieu of confirmation from the Tax
197 Commissioner of the gross annual district tax revenue
198 amount, the development office may use the estimate of the
199 gross annual district tax revenue amount provided by the
200 county commission pursuant to subsection (a) of this section.

201 (g) *Promulgation of rules.* -- The executive director of
202 the development office may promulgate rules to implement
203 the economic opportunity development district project
204 application approval process and to describe the criteria and
205 procedures it has established in connection therewith. These
206 rules are not subject to the provisions of chapter
207 twenty-nine-a of this code but shall be filed with the
208 Secretary of State.

**§7-22-10. Order to create district as approved by Development
Office and authorized by the Legislature.**

1 (a) *General.* -- If an economic opportunity development
2 district project has been approved by the executive director
3 of the development office and the levying of a special district
4 excise tax for the district has been authorized by the
5 Legislature, all in accordance with this article, the county
6 commission may create the district by order entered of record
7 as provided in article one of this chapter: *Provided*, That the
8 county commission may not amend, alter or change in any
9 manner the boundaries of the economic opportunity
10 development district authorized by the Legislature. In
11 addition to all other requirements, the order shall contain the
12 following:

13 (1) The name of the district and a description of its
14 boundaries;

15 (2) A summary of any proposed services to be provided
16 and capital improvements to be made within the district and
17 a reasonable estimate of any attendant costs;

18 (3) The base and rate of any special district excise tax
19 that may be imposed upon sales by businesses for the
20 privilege of operating within the district, which tax shall be
21 passed on to and paid by the consumer, and the manner in
22 which the taxes will be imposed, administered and collected,
23 all of which shall be in conformity with the requirements of
24 this article; and

25 (4) The district board members' terms, their method of
26 appointment and a general description of the district board's
27 powers and duties, which powers may include the authority:

28 (A) To make and adopt all necessary bylaws and rules for
29 its organization and operations not inconsistent with any
30 applicable laws;

31 (B) To elect its own officers, to appoint committees and
32 to employ and fix compensation for personnel necessary for
33 its operations;

34 (C) To enter into contracts with any person, agency,
35 government entity, agency or instrumentality, firm,
36 partnership, limited partnership, limited liability company or
37 corporation, including both public and private corporations,
38 and for-profit and not-for-profit organizations and generally
39 to do any and all things necessary or convenient for the
40 purpose of promoting, developing and advancing the
41 purposes described in section two of this article;

42 (D) To amend or supplement any contracts or leases or to
43 enter into new, additional or further contracts or leases upon

44 the terms and conditions for consideration and for any term
45 of duration, with or without option of renewal, as agreed
46 upon by the district board and any person, agency,
47 government entity, agency or instrumentality, firm,
48 partnership, limited partnership, limited liability company or
49 corporation;

50 (E) To, unless otherwise provided in, and subject to the
51 provisions of any contracts or leases to operate, repair,
52 manage and maintain buildings and structures and provide
53 adequate insurance of all types and in connection with the
54 primary use thereof and incidental thereto to provide
55 services, such as retail stores and restaurants, and to
56 effectuate incidental purposes, grant leases, permits,
57 concessions or other authorizations to any person or persons
58 upon the terms and conditions for consideration and for the
59 term of duration as agreed upon by the district board and any
60 person, agency, governmental department, firm or
61 corporation;

62 (F) To delegate any authority given to it by law to any of
63 its officers, committees, agents or employees;

64 (G) To apply for, receive and use grants-in-aid, donations
65 and contributions from any source or sources and to accept
66 and use bequests, devises, gifts and donations from any
67 person, firm or corporation;

68 (H) To acquire real property by gift, purchase or
69 construction or in any other lawful manner and hold title
70 thereto in its own name and to sell, lease or otherwise dispose
71 of all or part of any real property which it may own, either by
72 contract or at public auction, upon the approval by the district
73 board;

74 (I) To purchase or otherwise acquire, own, hold, sell,
75 lease and dispose of all or part of any personal property
76 which it may own, either by contract or at public auction;

77 (J) Pursuant to a determination by the district board that
78 there exists a continuing need for development expenditures
79 and that moneys or funds of the district are necessary
80 therefor, to borrow money and execute and deliver the
81 district's negotiable notes and other evidences of
82 indebtedness therefor, on the terms as the district shall
83 determine, and give security therefor as is requisite,
84 including, without limitation, a pledge of the district's rights
85 in its subaccount of the economic opportunity development
86 district fund;

87 (K) To acquire (either directly or on behalf of the county
88 an interest in any entity or entities that own any real property
89 situate in the district, to contribute capital to any entity or
90 entities and to exercise the rights of an owner with respect
91 thereto; and

92 (L) To expend its funds in the execution of the powers
93 and authority given in this section, which expenditures, by
94 the means authorized in this section, are hereby determined
95 and declared as a matter of legislative finding to be for a
96 public purpose and use, in the public interest and for the
97 general welfare of the people of West Virginia, to alleviate
98 and prevent economic deterioration and to relieve the existing
99 critical condition of unemployment existing within the state.

100 (b) *Additional contents of order.* -- The county
101 commission's order shall also state the general intention of
102 the county commission to develop and increase services and
103 to make capital improvements within the district.

104 (c) *Mailing of certified copies of order.* -- Upon entry of
105 an order establishing an economic opportunity development
106 district excise tax, a certified copy of the order shall be
107 mailed to the State Auditor, as ex officio the chief inspector
108 and supervisor of public offices, the State Treasurer and the
109 Tax Commissioner.

§7-22-12. Special district excise tax authorized.

1 (a) *General.* -- The county commission of a county,
2 authorized by the Legislature to levy a special district excise
3 tax for the benefit of an economic opportunity development
4 district, may, by order entered of record, impose that tax on
5 the privilege of selling tangible personal property and
6 rendering select services in the district in accordance with
7 this section.

8 (b) *Tax base.* -- The base of a special district excise tax
9 imposed pursuant to this section shall be identical to the base
10 of the consumers sales and service tax imposed pursuant to
11 article fifteen, chapter eleven of this code on sales made and
12 services rendered within the boundaries of the district. Sales
13 of gasoline and special fuel are not subject to special district
14 excise tax but remain subject to the tax levied by article
15 fifteen, chapter eleven of this code. Except for the exemption
16 provided in section nine-f of that article, all exemptions and
17 exceptions from the consumers sales and service tax also
18 apply to the special district excise tax.

19 (c) *Tax rate.* -- The rate or rates of a special district
20 excise tax levied pursuant to this section shall be identical to
21 the rate or rates of the consumer sales and service tax
22 imposed pursuant to article fifteen, chapter eleven of this
23 code on sales made and services rendered within the
24 boundaries of the district authorized by this section.

25 (d) *Collection by Tax Commissioner.* -- The order of the
26 county commission imposing a special district excise tax
27 shall provide for the tax to be collected by the Tax
28 Commissioner in the same manner as the tax levied by
29 section three, article fifteen, chapter eleven of this code is
30 administered, assessed, collected and enforced.

31 (1) The Tax Commissioner may require the electronic
32 filing of returns related to the special district excise tax

33 imposed pursuant to this section, and also may require the
34 electronic payment of the special district excise tax imposed
35 pursuant to this section. The Tax Commissioner may
36 prescribe by rules adopted or proposed pursuant to article
37 three, chapter twenty-nine-a of this code, administrative
38 notices, and forms and instructions, the procedures and
39 criteria to be followed to electronically file those returns and
40 to electronically pay the special district excise tax imposed
41 pursuant to this section.

42 (2) Any rules filed by the State Tax Commissioner
43 relating to the special district excise tax imposed pursuant to
44 this section shall set forth the following:

45 (A) Acceptable indicia of timely payment;

46 (B) Which type of electronic filing method or methods a
47 particular type of taxpayer may or may not use;

48 (C) What type of electronic payment method or methods
49 a particular type of taxpayer may or may not use;

50 (D) What, if any, exceptions are allowable, and
51 alternative methods of payment that may be used for any
52 exceptions;

53 (E) Procedures for making voluntary or mandatory
54 electronic payments or both; and

55 (F) Any other provisions necessary to ensure the timely
56 electronic filing of returns related to the special district excise
57 tax and the making of payments electronically of the special
58 district excise tax imposed pursuant to this section.

59 (3)(A) Notwithstanding the provisions of section five-d,
60 article ten, chapter eleven of this code: (i) So long as bonds
61 are outstanding pursuant to this article, the Tax
62 Commissioner shall provide on a monthly basis to the trustee

63 for bonds issued pursuant to this article information on
64 returns submitted pursuant to this article; and (ii) the trustee
65 may share the information so obtained with the county
66 commission that established the economic opportunity
67 development district that issued the bonds pursuant to this
68 article and with the bondholders and with bond counsel for
69 bonds issued pursuant to this article. The Tax Commissioner
70 and the trustee may enter into a written agreement in order to
71 accomplish exchange of the information.

72 (B) Any confidential information provided pursuant to
73 this subdivision shall be used solely for the protection and
74 enforcement of the rights and remedies of the bondholders of
75 bonds issued pursuant to this article. Any person or entity
76 that is in possession of information disclosed by the Tax
77 Commissioner or shared by the trustee pursuant to
78 subdivision (a) of this subsection is subject to the provisions
79 of section five-d, article ten, chapter eleven of this code as if
80 the person or entity that is in possession of the tax
81 information is an officer, employee, agent or representative
82 of this state or of a local or municipal governmental entity or
83 other governmental subdivision.

84 (e) *Deposit of net tax collected.* --

85 (1) The order of the county commission imposing a
86 special district excise tax shall provide that the Tax
87 Commissioner deposit the net amount of tax collected in the
88 Special Economic Opportunity Development District Fund to
89 the credit of the county commission's subaccount therein for
90 the economic opportunity development district and that the
91 money in the subaccount may only be used to pay for
92 development expenditures as provided in this article except
93 as provided in subsection (f) of this section.

94 (2) The State Treasurer shall withhold from the county
95 commission's subaccount in the Economic Opportunity
96 Development District Fund and shall deposit in the General

97 Revenue Fund of this state, on or before the twentieth day of
98 each calendar month next following the effective date of a
99 special district excise tax, a sum equal to one twelfth of the
100 base tax revenue amount last certified by the development
101 office pursuant to section seven of this article.

102 (f) *Effective date of special district excise tax.* -- Any
103 taxes imposed pursuant to the authority of this section are
104 effective on the first day of the calendar month that begins
105 sixty days after the date of adoption of an order entered of
106 record imposing the tax or the first day of any later calendar
107 month expressly designated in the order.

108 (g) *Copies of order.* -- Upon entry of an order levying a
109 special district excise tax, a certified copy of the order shall
110 be mailed to the State Auditor, as ex officio the chief
111 inspector and supervisor of public offices, the State Treasurer
112 and the Tax Commissioner.

§7-22-14. Modification of Included area; notice; hearing.

1 (a) *General.* -- The order creating an economic
2 opportunity development district may not be amended to
3 include additional contiguous property until after the
4 amendment is approved by the executive director of the
5 Development Office in the same manner as an application to
6 approve the establishment of the district is acted upon under
7 section seven of this article and the amendment is authorized
8 by the Legislature.

9 (b) *Limitations.* -- Additional property may not be
10 included in the district unless it is situated within the
11 boundaries of the county and is contiguous to the then current
12 boundaries of the district.

13 (c) *Public hearing required.* --

14 (1) The county commission of any county desiring to
15 amend its order shall designate a time and place for a public
16 hearing upon the proposal to include additional property.
17 The notice shall meet the requirements set forth in section six
18 of this article.

19 (2) At the time and place set forth in the notice, the
20 county commission shall afford the opportunity to be heard
21 to any owners of real property either currently included in or
22 proposed to be added to the existing district and to any other
23 residents of the county.

24 (d) *Application to West Virginia Development Office.* --
25 Following the hearing, the county commission may, by
26 resolution, apply to the Development Office to approve
27 inclusion of the additional property in the district.

28 (e) *Consideration by the Executive Director of the*
29 *Development Office.* -- Before the executive director of the
30 Development Office approves inclusion of the additional
31 property in the district, the Development Office shall
32 determine the amount of taxes levied by article fifteen,
33 chapter eleven of this code that were collected by businesses
34 located in the area the county commission proposes to add to
35 the district in the same manner as the base amount of tax was
36 determined when the district was first created. The State
37 Treasurer shall also deposit one twelfth of this additional tax
38 base amount into the General Revenue Fund each month, as
39 provided in section twelve of this article.

40 (f) *Legislative action required.* -- After the Executive
41 Director of the Development Office approves amending the
42 boundaries of the district, the Legislature must amend section
43 nine of this article to allow levy of the special district excise
44 tax on business located in geographic area to be included in
45 the district. After the Legislature amends said section, the
46 county commission may then amend its order: *Provided, That*

47 the order may not be effective any earlier than the first day of
48 the calendar month that begins sixty days after the effective
49 date of the act of the Legislature authorizing the levy on the
50 special district excise tax on businesses located in the
51 geographic area to be added to the boundaries of the district
52 for which the tax is levied or a later date as set forth in the
53 order of the county commission.

54 (g) *Collection of special district excise tax.* -- All
55 businesses included in a district because of the boundary
56 amendment shall on the effective date of the order,
57 determined as provided in subsection (f) of this section,
58 collect the special district excise tax on all sales on tangible
59 property or services made from locations in the district on or
60 after the effective date of the county commission's order or
61 a later date as set forth in the order.

62 (h) *Minor Modifications.* Notwithstanding any provision
63 of this article to contrary, a county commission may amend
64 the order creating an economic opportunity development
65 district to make, and may make, modifications to the
66 boundaries of the economic opportunity development district
67 without holding a public hearing or receiving approval of the
68 executive director of the West Virginia Development Office
69 or authorization by the Legislature if the modifications do not
70 increase the total acreage of the economic opportunity
71 development district or result in a change to the base tax
72 revenue amount. The county commission is authorized to
73 levy special district excise taxes on sales of tangible personal
74 property and services made from business locations within
75 the modified boundaries of the economic opportunity
76 development district.

§7-22-15. Abolishment and dissolution of district; notice; hearing.

1 (a) *General.* -- Except upon the express written consent
2 of the executive director of the development office and of all
3 the holders or obligees of any indebtedness or other
4 instruments the proceeds of which were applied to any
5 development expenditures or any indebtedness the payment
6 of which is secured by revenues payable into the fund
7 provided under section eight of this article or by any public
8 property, a district may only be abolished by the county
9 commission when there is no outstanding indebtedness, the
10 proceeds of which were applied to any development
11 expenditures or the payment of which is secured by revenues
12 payable into the fund provided under section eight of this
13 article, or by any public property, and following a public
14 hearing upon the proposed abolishment.

15 (b) *Notice of public hearing.* -- Notice of the public hearing
16 required by subsection (a) of this section shall be provided by
17 first-class mail to all owners of real property within the district
18 and shall be published as a Class I-0 legal advertisement in
19 compliance with article three, chapter fifty-nine of this code at
20 least twenty days prior to the public hearing.

21 (c) *Transfer of district assets and funds.* -- Upon the
22 abolishment of any economic opportunity development
23 district, any funds or other assets, contractual rights or
24 obligations, claims against holders of indebtedness or other
25 financial benefits, liabilities or obligations existing after full
26 payment has been made on all existing contracts, bonds,
27 notes or other obligations of the district are transferred to and
28 assumed by the county commission. Any funds or other
29 assets transferred shall be used for the benefit of the area
30 included in the district being abolished.

31 (d) *Reinstatement of district.* -- Following abolishment
32 of a district pursuant to this section, its reinstatement requires
33 compliance with all requirements and procedures set forth in

34 this article for the initial development, approval,
35 establishment and creation of an economic opportunity
36 development district.

§7-22-17. Security for bonds.

1 (a) *General.* -- Unless the county commission otherwise
2 determines in the order authorizing the issuance of the bonds
3 or notes under the authority of this article, there is hereby
4 created a statutory lien upon the subaccount created pursuant
5 to section eight of this article and all special district excise
6 tax revenues collected for the benefit of the district pursuant
7 to section eleven-a, article ten, chapter eleven of this code for
8 the purpose of securing the principal of the bonds or notes
9 and the interest thereon.

10 (b) *Security for debt service.* -- The principal of and
11 interest on any bonds or notes issued under the authority of
12 this article shall be secured by a pledge of the special district
13 excise tax revenues derived from the economic opportunity
14 development district project by the county commission
15 issuing the bonds or notes to the extent provided in the order
16 adopted by the county commission authorizing the issuance
17 of the bonds or notes.

18 (c) *Trust indenture.* --

19 (1) In the discretion and at the option of the county
20 commission, the bonds and notes may also be secured by a
21 trust indenture by and between the county commission and a
22 corporate trustee, which may be a trust company or bank
23 having trust powers, within or without the State of West
24 Virginia.

25 (2) The resolution order authorizing the bonds or notes
26 and fixing the details thereof may provide that the trust
27 indenture may contain provisions for the protection and
28 enforcing the rights and remedies of the bondholders as are

29 reasonable and proper, not in violation of law, including
30 covenants setting forth the duties of the county commission
31 in relation to the construction, acquisition or financing of an
32 economic opportunity development district project, or part
33 thereof or an addition thereto, and the improvement, repair,
34 maintenance and insurance thereof and for the custody,
35 safeguarding and application of all moneys and may provide
36 that the economic opportunity development district project
37 shall be constructed and paid for under the supervision and
38 approval of the consulting engineers or architects employed
39 and designated by the county commission or, if directed by
40 the county commission in the resolution order, by the district
41 board, and satisfactory to the purchasers of the bonds or
42 notes, their successors, assigns or nominees who may require
43 the security given by any contractor or any depository of the
44 proceeds of the bonds or notes or the revenues received from
45 the district project be satisfactory to the purchasers, their
46 successors, assigns or nominees.

47 (3) The indenture may set forth the rights and remedies
48 of the bondholders, the county commission or trustee and the
49 indenture may provide for accelerating the maturity of the
50 revenue bonds, at the option of the bondholders or the county
51 commission issuing the bonds, upon default in the payment
52 of the amounts due under the bonds.

53 (4) The county commission may also provide by
54 resolution and in the trust indenture for the payment of the
55 proceeds of the sale of the bonds or notes and the revenues
56 from the economic opportunity development district project
57 to any depository it determines, for the custody and
58 investment thereof and for the method of distribution thereof,
59 with safeguards and restrictions it determines to be necessary
60 or advisable for the protection thereof and upon the filing of
61 a certified copy of the resolution or of the indenture for
62 record in the office of the clerk of the county commission of
63 the county in which the economic opportunity development

64 project is located, the resolution has the same effect, as to
65 notice, as the recordation of a deed of trust or other
66 recordable instrument.

67 (5) In the event that more than one certified resolution or
68 indenture is recorded, the security interest granted by the first
69 recorded resolution or indenture has priority in the same
70 manner as an earlier filed deed of trust except to the extent
71 the earlier recorded resolution or indenture provides
72 otherwise.

73 (d) *Mortgage or deed of trust.* --

74 (1) In addition to or in lieu of the indenture provided in
75 subsection (c) of this section, the principal of and interest on
76 the bonds or notes may, but need not, be secured by a
77 mortgage or deed of trust covering all or any part of the
78 economic opportunity development district project from
79 which the revenues pledged are derived and the same may be
80 secured by an assignment or pledge of the income received
81 from the economic opportunity development district project.

82 (2) The proceedings under which bonds or notes are
83 authorized to be issued, when secured by a mortgage or deed
84 of trust, may contain the same terms, conditions and
85 provisions provided herein when an indenture is entered into
86 between the county commission and a trustee and any
87 mortgage or deed of trust may contain any agreements and
88 provisions customarily contained in instruments securing
89 bonds or notes, including, without limiting the generality of
90 the foregoing, provisions respecting the fixing and collection
91 of revenues from the economic opportunity development
92 district project covered by the proceedings or mortgage, the
93 terms to be incorporated in any lease, sale or financing
94 agreement with respect to the economic opportunity
95 development district project, the improvement, repair,
96 maintenance and insurance of the economic opportunity

97 district project, the creation and maintenance of special funds
98 from the revenues received from the economic opportunity
99 development district project and the rights and remedies
100 available in event of default to the bondholders or note
101 holders, the county commission, or to the trustee under an
102 agreement, indenture, mortgage or deed of trust, all as the
103 county commission body considers advisable and shall not be
104 in conflict with the provisions of this article or any existing
105 law: *Provided*, That in making any agreements or provisions,
106 a county commission shall not have the power to incur
107 original indebtedness by indenture, order, resolution,
108 mortgage or deed of trust except with respect to the economic
109 opportunity development district project and the application
110 of the revenues therefrom and shall not have the power to
111 incur a pecuniary liability or a charge upon its general credit
112 or against its taxing powers unless approved by the voters in
113 accordance with article one, chapter thirteen of this code or
114 as otherwise permitted by the Constitution of this state.

115 (e) *Enforcement of obligations.* --

116 (1) The proceedings authorizing any bonds and any
117 indenture, mortgage or deed of trust securing the bonds may
118 provide that, in the event of default in payment of the
119 principal of or the interest on the bonds, or notes, or in the
120 performance of any agreement contained in the proceedings,
121 indenture, mortgage or deed of trust, payment and
122 performance may be enforced by the appointment of a
123 receiver in equity with power to charge and collect rents or
124 other amounts and to apply the revenues from the economic
125 opportunity development district project in accordance with
126 the proceedings or the provisions of the agreement, indenture,
127 mortgage or deed of trust.

128 (2) Any agreement, indenture, mortgage or deed of trust
129 may provide also that, in the event of default in payment or
130 the violation of any agreement contained in the mortgage or

131 deed of trust, the agreement, indenture, mortgage or deed of
132 trust may be foreclosed either by sale at public outcry or by
133 proceedings in equity and may provide that the holder or
134 holders of any of the bonds secured thereby may become the
135 purchaser at any foreclosure sale, if the highest bidder
136 therefor.

137 (f) *No pecuniary liability.* -- No breach of any agreement,
138 indenture, mortgage or deed of trust may impose any
139 pecuniary liability upon a county or any charge upon its
140 general credit or against its taxing powers.

§7-22-20. Use of proceeds from sale of bonds.

1 (a) *General.* -- The proceeds from the sale of any bonds
2 issued under authority of this article shall be applied only for
3 the purpose for which the bonds were issued: *Provided*, That
4 any accrued interest received in any sale shall be applied to
5 the payment of the interest on the bonds sold: *Provided*,
6 *however*, That if for any reason any portion of the proceeds
7 may not be needed for the purpose for which the bonds were
8 issued, then the unneeded portion of the proceeds may be
9 applied to the purchase of bonds for cancellation or payment
10 of the principal of or the interest on the bonds, or held in
11 reserve for the payment thereof.

12 (b) *Payment of costs.* -- The costs that may be paid with
13 the proceeds of the bonds include all development
14 expenditures described in section five of this article and may
15 also include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined
17 necessary;

18 (2) The actual cost of the construction of any part of an
19 economic opportunity development district project which
20 may be constructed, including architects', engineers',

20 may be constructed, including architects', engineers',
21 financial or other consultants' and legal fees;

22 (3) The purchase price or rental of any part of an
23 economic opportunity development district project that may
24 be acquired by purchase or lease;

25 (4) All expenses incurred in connection with the
26 authorization, sale and issuance of the bonds to finance the
27 acquisition and the interest on the bonds for a reasonable time
28 prior to construction during construction and for not exceeding
29 twelve months after completion of construction; and

30 (5) Any other costs and expenses reasonably necessary in
31 the establishment and acquisition of an economic opportunity
32 development district project and the financing thereof.

CHAPTER 35

**(S. B. 428 - By Senators Kessler
(Acting President) and Miller)**

[Amended and again passed, in an effort to meet the objections of the
Governor March 18, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §59-1-4, §59-1-11 and §59-1-13 of the Code of West Virginia, 1931, as amended, all relating generally to fees charged by the clerk of a circuit court; increasing the fees charged by the clerk of a circuit court for medical professional liability actions; and fees collected by clerks of court to be used to enhance funding for civil legal services for victims of domestic violence and low income citizens in the state.

Be it enacted by the Legislature of West Virginia:

That §59-1-4, §59-1-11 and §59-1-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-4. Fees collected by Secretary of State, Auditor and Clerk of Supreme Court of Appeals to be paid into State Treasury; accounts; reports.

1 Except as otherwise provided by law, the fees to be
2 charged by the Auditor, Secretary of State and Clerk of the
3 Supreme Court of Appeals, by virtue of this article or any
4 other law, are the property of the State of West Virginia. The
5 Auditor, Secretary of State and Clerk of the Supreme Court
6 of Appeals shall account for and pay into the State Treasury
7 at least once every thirty days all fees collected or appearing
8 to be due to the state, to the credit of the general state fund or
9 other fund as provided by law. The Auditor, Secretary of
10 State and Clerk of the Supreme Court of Appeals shall each
11 keep a complete and accurate itemized account of all fees
12 collected by them and the nature of the services rendered for
13 which all fees were charged and collected, in accordance with
14 generally accepted accounting principles, as provided in
15 article two, chapter five-a of this code. All accounts shall be
16 open to inspection and audit as provided in article two,
17 chapter four of this code.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect for
2 services rendered by the clerk the following fees which shall
3 be paid in advance by the parties for whom services are to be
4 rendered:

5 (1) For instituting any civil action under the Rules of
6 Civil Procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals, or any
8 other action, cause, suit or proceeding, \$155, of which \$30
9 shall be deposited in the Courthouse Facilities Improvement
10 Fund created by section six, article twenty-six, chapter
11 twenty-nine of this code and \$20 deposited in the special
12 revenue account created in section six hundred three, article
13 twenty-six, chapter forty-eight of this code to provide legal
14 services for domestic violence victims;

15 (2) For instituting an action for medical professional
16 liability, \$280, of which \$10 shall be deposited in the
17 Courthouse Facilities Improvement Fund created by section
18 six, article twenty-six, chapter twenty-nine of this code;

19 (3) Beginning on and after July 1, 1999, for instituting an
20 action for divorce, separate maintenance or annulment, \$135;

21 (4) For petitioning for the modification of an order
22 involving child custody, child visitation, child support or
23 spousal support, \$85; and

24 (5) For petitioning for an expedited modification of a
25 child support order, \$35.

26 (b) In addition to the foregoing fees, the following fees
27 shall be charged and collected:

28 (1) For preparing an abstract of judgment, \$5;

29 (2) For a transcript, copy or paper made by the clerk for
30 use in any other court or otherwise to go out of the office, for
31 each page, \$1;

32 (3) For issuing a suggestion and serving notice to the
33 debtor by certified mail, \$25;

- 34 (4) For issuing an execution, \$25;
- 35 (5) For issuing or renewing a suggestee execution and
36 serving notice to the debtor by certified mail, \$25;
- 37 (6) For vacation or modification of a suggestee execution,
38 \$1;
- 39 (7) For docketing and issuing an execution on a transcript
40 of judgment from magistrate court, \$3;
- 41 (8) For arranging the papers in a certified question, writ
42 of error, appeal or removal to any other court, \$10, of which
43 \$5 shall be deposited in the Courthouse Facilities
44 Improvement Fund created by section six, article twenty-six,
45 chapter twenty-nine of this code;
- 46 (9) For postage and express and for sending or receiving
47 decrees, orders or records, by mail or express, three times the
48 amount of the postage or express charges;
- 49 (10) For each subpoena, on the part of either plaintiff or
50 defendant, to be paid by the party requesting the same, 50¢;
- 51 (11) For additional service, plaintiff or appellant, where
52 any case remains on the docket longer than three years, for
53 each additional year or part year, \$20; and
- 54 (12) For administering funds deposited into a federally
55 insured interest-bearing account or interest-bearing
56 instrument pursuant to a court order, \$50, to be collected
57 from the party making the deposit. A fee collected pursuant
58 to this subdivision shall be paid into the general county fund.
- 59 (c) The clerk shall tax the following fees for services in
60 a criminal case against a defendant convicted in such court:

61 (1) In the case of a misdemeanor, \$85; and

62 (2) In the case of a felony, \$105, of which \$10 shall be
63 deposited in the Courthouse Facilities Improvement Fund
64 created by section six, article twenty-six, chapter twenty-nine
65 of this code.

66 (d) The clerk of a circuit court shall charge and collect a
67 fee of \$25 per bond for services rendered by the clerk for
68 processing of criminal bonds and the fee shall be paid at the
69 time of issuance by the person or entity set forth below:

70 (1) For cash bonds, the fee shall be paid by the person
71 tendering cash as bond;

72 (2) For recognizance bonds secured by real estate, the fee
73 shall be paid by the owner of the real estate serving as surety;

74 (3) For recognizance bonds secured by a surety company,
75 the fee shall be paid by the surety company;

76 (4) For ten-percent recognizance bonds with surety, the
77 fee shall be paid by the person serving as surety; and

78 (5) For ten-percent recognizance bonds without surety,
79 the fee shall be paid by the person tendering ten percent of
80 the bail amount.

81 In instances in which the total of the bond is posted by
82 more than one bond instrument, the above fee shall be
83 collected at the time of issuance of each bond instrument
84 processed by the clerk and all fees collected pursuant to this
85 subsection shall be deposited in the Courthouse Facilities
86 Improvement Fund created by section six, article twenty-six,
87 chapter twenty-nine of this code. Nothing in this subsection
88 authorizes the clerk to collect the above fee from any person
89 for the processing of a personal recognizance bond.

90 (e) The clerk of a circuit court shall charge and collect a
 91 fee of \$10 for services rendered by the clerk for processing
 92 of bailpiece and the fee shall be paid by the surety at the time
 93 of issuance. All fees collected pursuant to this subsection
 94 shall be deposited in the Courthouse Facilities Improvement
 95 Fund created by section six, article twenty-six, chapter
 96 twenty-nine of this code.

97 (f) No clerk is required to handle or accept for
 98 disbursement any fees, cost or amounts of any other officer
 99 or party not payable into the county treasury except on
 100 written order of the court or in compliance with the
 101 provisions of law governing such fees, costs or accounts.

§59-1-13. Fees to be charged by Clerk of Supreme Court of Appeals.

1 The Clerk of the Supreme Court of Appeals shall charge
 2 the following fees to be paid by the parties for whom the
 3 services are rendered:

4 For all copies of petitions, records, orders, opinions or
 5 other papers, per page. 25¢

6 For each certificate under seal of the court. \$5

7 For license to practice law, suitable for framing. . . \$25

8 For docketing any civil appeals, including appeals from
 9 Family Courts, but not including, appeals in workers'
 10 compensations cases, any action in the Supreme Court's
 11 original jurisdiction or any other action, cause or
 12 proceeding \$200

13 For any other work or services not herein enumerated, the
 14 clerk shall charge the fees prescribed for similar services by
 15 clerks of circuit courts.

16 Fees collected for docketing civil appeals shall be
17 expended, in the discretion of the West Virginia Supreme
18 Court of Appeals, solely to provide grants to the federally
19 designated provider of civil legal services for low income
20 citizens in the state.

CHAPTER 36

**(Com. Sub. for H. B. 2860 - By Delegates Mahan,
Boggs, Brown, Fleischauer, T. Campbell,
Doyle, Cowles, Perdue and Miley)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-9-5, all relating to authorization of the promulgation of certain rules by the Governor's Committee on Crime, Delinquency and Correction regarding identification, investigation, reporting, and prosecution of suspected child abuse and neglect; convening certain meetings of advisory committee to assist in development of rules; and providing for composition of advisory committee.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-9-5, to read as follows:

**ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME,
DELINQUENCY AND CORRECTION.**

§15-9-5. Authorization for the promulgation of legislative rules.

1 (a) The Governor's Committee on Crime, Delinquency and
2 Correction shall develop and promulgate rules for state, county
3 and municipal law-enforcement officers, law-enforcement
4 agencies and communications and emergency operations centers
5 that dispatch law-enforcement officers with regard to the
6 identification, investigation, reporting and prosecution of
7 suspected child abuse and neglect: *Provided*, That such rules and
8 procedures must be consistent with the priority criteria
9 prescribed by generally applicable department procedures.

10 (b) The rules and the revisions thereof as provided in this
11 section shall be proposed as legislative rules for legislative
12 approval in accordance with article three chapter twenty-
13 nine-a of this code.

14 (c) Prior to the publication of proposed rules, the
15 Governor's Committee on Crime, Delinquency and
16 Correction shall convene a meeting or meetings of an
17 advisory committee to assist in the development of the rules.

18 (d) The advisory committee shall meet at least on a
19 biennial basis to review the rules and to propose revisions as
20 a result of changes in law or policy.

21 (e) The advisory committee shall be composed of:

22 (1) The Director of the Prosecuting Attorney's Institute
23 or his or her designee;

24 (2) The State Superintendent of the West Virginia State
25 Police or his or her designee;

26 (3) One representative of law-enforcement with
27 experience in investigating child abuse and neglect cases

28 representing municipalities appointed by the Executive
29 Director of the Governor's Committee on Crime,
30 Delinquency and Correction;

31 (4) One representative of law-enforcement with
32 experience in investigating child abuse and neglect cases
33 representing counties appointed by the Executive Director of
34 the Governor's Committee on Crime, Delinquency and
35 Correction;

36 (5) The Commissioner of the Bureau for Children and
37 Families of the Department of Health and Human Resources
38 or his or her designee;

39 (6) A health care provider with pediatric experience and
40 child abuse expertise;

41 (7) The Director of the Division of Children's Services of
42 the Administrative Office of the Courts or his or her
43 designee, as a nonvoting member;

44 (8) The Director of the West Virginia Child Advocacy
45 Network or his or her designee;

46 (9) The Director of the West Virginia Developmental
47 Disabilities Council or his or her designee;

48 (10) An individual representing communications and
49 emergency operations centers that dispatch law-enforcement
50 officers; and

51 (11) Other persons or organizations who, in the discretion
52 of the Executive Director of the Governor's Committee on
53 Crime, Delinquency and Corrections have an interest in the
54 rules: *Provided*, That the total number of the advisory
55 committee may not exceed sixteen.

CHAPTER 37

(Com. Sub. for H. B. 2818 - By Delegates Manchin,
Caputo, Fleischauer, Fragale, Guthrie,
Poore, Skaff, Doyle and Stowers)

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to increasing the allowable expense under the Crime Victims Award Program; increasing the amount that may be paid for the clean-up of real property damage by a methamphetamine laboratory; increasing allowable reimbursement for funeral expenses; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 of the Code of West Virginia, 1931, as amended, be amended to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) “Claimant” means any of the following persons,
3 whether residents or nonresidents of this state, who claim an
4 award of compensation under this article:

5 (1) A victim, except the term “victim” does not include
6 a nonresident of this state where the criminally injurious act
7 did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim or, if the deceased victim is a minor, the parents, legal
10 guardians and siblings of the victim;

11 (3) A third person, other than a collateral source, who
12 legally assumes or voluntarily pays the obligations of a
13 victim or a victim’s dependent when the obligations are
14 incurred as a result of the criminally injurious conduct that is
15 the subject of the claim;

16 (4) A person who is authorized to act on behalf of a
17 victim, dependent or a third person who is not a collateral
18 source including, but not limited to, assignees, persons
19 holding power of attorney or others who hold authority to
20 make or submit claims in place of or on behalf of a victim, a
21 dependent or third person who is not a collateral source and
22 if the victim, dependent or third person who is not a collateral
23 source is a minor or other legally incompetent person, their
24 duly qualified fiduciary;

25 (5) A person who is a secondary victim in need of mental
26 health counseling due to the person’s exposure to the crime
27 committed whose award may not exceed \$1,000; and

28 (6) A person who owns real property damaged by the
29 operation of a methamphetamine laboratory without the
30 knowledge or consent of the owner of the real property.

31 (b) “Collateral source” means a source of benefits or
32 advantages for economic loss otherwise compensable that the
33 victim or claimant has received or that is readily available to
34 him or her from any of the following sources:

35 (1) The offender, including restitution received from the
36 offender pursuant to an order by a court sentencing the
37 offender or placing him or her on probation following a
38 conviction in a criminal case arising from the criminally
39 injurious act for which a claim for compensation is made;

40 (2) The government of the United States or its agencies,
41 a state or its political subdivisions or an instrumentality of
42 two or more states;

43 (3) Social Security, Medicare and Medicaid;

44 (4) State-required, temporary, nonoccupational disability
45 insurance or other disability insurance;

46 (5) Workers' compensation;

47 (6) Wage continuation programs of an employer;

48 (7) Proceeds of a contract of insurance payable to the
49 victim or claimant for loss that was sustained because of the
50 criminally injurious conduct;

51 (8) A contract providing prepaid hospital and other health
52 care services or benefits for disability; and

53 (9) That portion of the proceeds of all contracts of
54 insurance payable to the claimant on account of the death of
55 the victim which exceeds \$25,000.

56 (c) "Criminally injurious conduct" means conduct that
57 occurs or is attempted in this state, or in any state not having
58 a victim compensation program, which poses a substantial
59 threat of personal injury or death and is punishable by fine,
60 imprisonment or death or would be so punishable but for a
61 finding by a court of competent jurisdiction that the person

62 committing the crime lacked capacity. Criminally injurious
63 conduct also includes criminally injurious conduct committed
64 outside of the United States against a resident of this state.
65 Criminally injurious conduct does not include conduct arising
66 out of the ownership, maintenance or use of a motor vehicle
67 unless the person engaging in the conduct intended to cause
68 personal injury or death or committed negligent homicide,
69 driving under the influence of alcohol, controlled substances
70 or drugs, leaving the scene of the accident or reckless driving.

71 (d) “Dependent” means an individual who received over
72 half of his or her support from the victim. For the purpose of
73 making this determination there shall be taken into account
74 the amount of support received from the victim as compared
75 to the entire amount of support the individual received from
76 all sources including self-support. The term “support”
77 includes, but is not limited to, food, shelter, clothing, medical
78 and dental care and education. The term “dependent”
79 includes a child of the victim born after his or her death.

80 (e) “Economic loss” means economic detriment
81 consisting only of allowable expense, work loss and
82 replacement services loss. If criminally injurious conduct
83 causes death, economic loss includes a dependent's economic
84 loss and a dependent's replacement services loss.
85 Noneconomic detriment is not economic loss, however,
86 economic loss may be caused by pain and suffering or
87 physical impairment. For purposes of this article, the term
88 “economic loss” includes a lost scholarship as defined in this
89 section.

90 (f) “Allowable expense” includes the following:

91 (1) Reasonable charges incurred or to be incurred for
92 reasonably needed products, services and accommodations
93 including those for medical care, mental health counseling,

94 prosthetic devices, eye glasses, dentures, rehabilitation and
95 other remedial treatment and care but does not include that
96 portion of a charge for a room in a hospital, clinic,
97 convalescent home, nursing home or other institution
98 engaged in providing nursing care and related services which
99 is in excess of a reasonable and customary charge for
100 semiprivate accommodations unless accommodations other
101 than semiprivate accommodations are medically required;

102 (2) A total charge not in excess of \$10,000 for expenses
103 in any way related to funerals, cremations and burials;

104 (3) A charge, not to exceed \$10,000, for cleanup of real
105 property damaged by a methamphetamine laboratory or a
106 charge not to exceed \$1,000 for any other crime scene
107 cleanup;

108 (4) Victim relocation costs not to exceed \$2,000;

109 (5) Reasonable travel expenses not to exceed \$1,000 for
110 a claimant to attend court proceedings conducted for the
111 prosecution of the offender;

112 (6) Reasonable travel expenses for a claimant to return a
113 person who is a minor or incapacitated adult who has been
114 unlawfully removed from this state to another state or
115 country if the removal constitutes a crime under the laws of
116 this state which may not exceed \$2,000 for expenses to
117 another state or \$3,000 to another country; and

118 (7) Reasonable travel expenses for the transportation of
119 a victim to and from a medical facility.

120 (g) "Work loss" means loss of income from work that the
121 injured person would have performed if he or she had not
122 been injured and expenses reasonably incurred or to be
123 incurred by him or her to obtain services in lieu of those he

124 or she would have performed for income. “Work loss” is
125 reduced by income from substitute work actually performed
126 or to be performed by him or her or by income he or she
127 would have earned in available appropriate substitute work
128 that he or she was capable of performing but unreasonably
129 failed to undertake. “Work loss” also includes loss of income
130 from work by the parent or legal guardian of a minor victim
131 who must miss work to take care of the minor victim.

132 (h) “Replacement services loss” means expenses
133 reasonably incurred or to be incurred in obtaining ordinary
134 and necessary services in lieu of those the injured person
135 would have performed for the benefit of himself or herself or
136 his or her family if he or she had not been injured.
137 “Replacement services loss” does not include services an
138 injured person would have performed to generate income.

139 (i) “Dependent's economic loss” means loss after a
140 victim's death of contributions or things of economic value to
141 his or her dependents but does not include services they
142 would have received from the victim if he or she had not
143 suffered the fatal injury. This amount is reduced by expenses
144 avoided by the dependent due to the victim's death.

145 (j) “Dependent's replacement service loss” means loss
146 reasonably incurred or to be incurred by dependents after a
147 victim's death in obtaining ordinary and necessary services in
148 lieu of those the victim would have performed for their
149 benefit if he or she had not suffered the fatal injury. This
150 amount is reduced by expenses avoided due to the victim's
151 death but which are not already subtracted in calculating a
152 dependent's economic loss.

153 (k) “Victim” means the following:

154 (1) A person who suffers personal injury or death as a
155 result of any one of the following:

156 (A) Criminally injurious conduct;

157 (B) The good faith effort of the person to prevent
158 criminally injurious conduct; or

159 (C) The good faith effort of the person to apprehend a
160 person that the injured person has observed engaging in
161 criminally injurious conduct or who the injured person has
162 reasonable cause to believe has engaged in criminally
163 injurious conduct immediately prior to the attempted
164 apprehension.

165 (2) The owner of real property damaged by the operation
166 of a methamphetamine laboratory which operation was
167 without his or her knowledge or consent.

168 (l) “Contributory misconduct” means any conduct of the
169 claimant or of the victim through whom the claimant claims
170 an award that is unlawful or intentionally tortious and that,
171 without regard to the conduct’s proximity in time or space to
172 the criminally injurious conduct, has a causal relationship to
173 the criminally injurious conduct that is the basis of the claim
174 and includes the voluntary intoxication of the claimant, either
175 by the consumption of alcohol or the use of any controlled
176 substance, when the intoxication has a causal connection or
177 relationship to the injury sustained.

178 (m) “Lost scholarship” means a scholarship, academic
179 award, stipend or other monetary scholastic assistance which
180 had been awarded or conferred upon a victim in conjunction
181 with a post-secondary school educational program and which
182 the victim is unable to receive or use, in whole or in part, due
183 to injuries received from criminally injurious conduct.

CHAPTER 38

**(Com. Sub. for H. B. 2864 - By Delegates
Miley, Lawrence, Ferro, Skaff, Perdue,
Brown, Paxton and Stowers)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-14g; and to amend and reenact §61-2-28 of said code, all relating to the creation of the misdemeanor offense of unlawful restraint; distinguishing the offense from that of kidnapping; defining restrain; providing for affirmative defenses; and penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-14g; and to amend and reenact §61-2-28 of said code, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14g. Unlawful restraint; penalties.

- 1 (a) Any person who, without legal authority intentionally
- 2 restrains another with the intent that the other person not be
- 3 allowed to leave the place of restraint and who does so by
- 4 physical force or by overt or implied threat of violence or by
- 5 actual physical restraint but without the intent to obtain any

6 other concession or advantage as those terms are used in
7 section fourteen-a of this article is guilty of a misdemeanor
8 and upon conviction shall be confined in jail for not more
9 than one year, fined not more than \$1,000, or both.

10 (b) In any prosecution under this section, it is an
11 affirmative defense that:

12 (1) The defendant acted reasonably and in good faith to
13 protect the person from imminent physical danger; or

14 (2) The person restrained was a child less than eighteen
15 years old and that the actor was a parent or legal guardian, or
16 a person acting under authority granted by a parent or legal
17 guardian of such child, or by a teacher or other school
18 personnel acting under authority granted by section one,
19 article five, chapter eighteen-a of this code, and that his or
20 her sole purpose was to assume control of such child.

21 (c) As used in this section to “restrain” means to restrict
22 a persons movement without his or her consent.

23 (d) This section shall not apply to acts done by a law-
24 enforcement officer in the lawful exercise of his or her duties.

§61-2-28. Domestic violence -- Criminal acts.

1 (a) *Domestic battery.* -- Any person who unlawfully and
2 intentionally makes physical contact of an insulting or
3 provoking nature with his or her family or household member
4 or unlawfully and intentionally causes physical harm to his
5 or her family or household member, is guilty of a
6 misdemeanor and, upon conviction thereof, shall be confined
7 in a county or regional jail for not more than twelve months,
8 or fined not more than five hundred dollars, or both.

9 (b) *Domestic assault.* -- Any person who unlawfully
10 attempts to commit a violent injury against his or her family
11 or household member or unlawfully commits an act which
12 places his or her family or household member in reasonable
13 apprehension of immediately receiving a violent injury, is
14 guilty of a misdemeanor and, upon conviction thereof, shall
15 be confined in a county or regional jail for not more than six
16 months, or fined not more than one hundred dollars, or both.

17 (c) *Second offense.* -- Domestic assault or domestic
18 battery.

19 A person convicted of a violation of subsection (a) of this
20 section after having been previously convicted of a violation
21 of subsection (a) or (b) of this section, after having been
22 convicted of a violation of subsection (b) or (c), section nine
23 of this article or subsection (a), section fourteen-g of this
24 article where the victim was his or her current or former
25 spouse, current or former sexual or intimate partner, person
26 with whom the defendant has a child in common, person with
27 whom the defendant cohabits or has cohabited, a parent or
28 guardian, the defendant's child or ward or a member of the
29 defendant's household at the time of the offense or who has
30 previously been granted a period of pretrial diversion
31 pursuant to section twenty-two, article eleven of this chapter
32 for a violation of subsection (a) or (b) of this section, or a
33 violation of subsection (b) or (c), section nine of this article
34 or subsection (a), section fourteen-g of this article where the
35 victim was a current or former spouse, current or former
36 sexual or intimate partner, person with whom the defendant
37 has a child in common, person with whom the defendant
38 cohabits or has cohabited, a parent or guardian, the
39 defendant's child or ward or a member of the defendant's
40 household at the time of the offense is guilty of a
41 misdemeanor and, upon conviction thereof, shall be confined
42 in a county or regional jail for not less than sixty days nor

43 more than one year, or fined not more than one thousand
44 dollars, or both.

45 A person convicted of a violation of subsection (b) of this
46 section after having been previously convicted of a violation
47 of subsection (a) or (b) of this section, after having been
48 convicted of a violation of subsection (b) or (c), section nine
49 of this article or subsection (a), section fourteen-g of this
50 article where the victim was a current or former spouse,
51 current or former sexual or intimate partner, person with
52 whom the defendant has a child in common, person with
53 whom the defendant cohabits or has cohabited, a parent or
54 guardian, the defendant's child or ward or a member of the
55 defendant's household at the time of the offense or having
56 previously been granted a period of pretrial diversion
57 pursuant to section twenty-two, article eleven of this chapter
58 for a violation of subsection (a) or (b) of this section or
59 subsection (b) or (c), section nine of this article or subsection
60 (a), section fourteen-g of this article where the victim was a
61 current or former spouse, current or former sexual or intimate
62 partner, person with whom the defendant has a child in
63 common, person with whom the defendant cohabits or has
64 cohabited, a parent or guardian, the defendant's child or ward
65 or a member of the defendant's household at the time of the
66 offense shall be confined in a county or regional jail for not
67 less than thirty days nor more than six months, or fined not
68 more than five hundred dollars, or both.

69 (d) Any person who has been convicted of a third or
70 subsequent violation of the provisions of subsection (a) or (b)
71 of this section, a third or subsequent violation of the
72 provisions of section nine of this article or subsection (a),
73 section fourteen-g of this article where the victim was a
74 current or former spouse, current or former sexual or intimate
75 partner, person with whom the defendant has a child in
76 common, person with whom the defendant cohabits or has

77 cohabited, a parent or guardian, the defendant’s child or ward
78 or a member of the defendant’s household at the time of the
79 offense or who has previously been granted a period of
80 pretrial diversion pursuant to section twenty-two, article
81 eleven of this chapter for a violation of subsection (a) or (b)
82 of this section or a violation of the provisions of section nine
83 of this article or subsection (a), section fourteen-g of this
84 article in which the victim was a current or former spouse,
85 current or former sexual or intimate partner, person with
86 whom the defendant has a child in common, person with
87 whom the defendant cohabits or has cohabited, a parent or
88 guardian, the defendant’s child or ward or a member of the
89 defendant’s household at the time of the offense, or any
90 combination of convictions or diversions for these offenses,
91 is guilty of a felony if the offense occurs within ten years of
92 a prior conviction of any of these offenses and, upon
93 conviction thereof, shall be confined in a state correctional
94 facility not less than one nor more than five years or fined not
95 more than two thousand five hundred dollars, or both.

96 (e) As used in this section, “family or household
97 member” means “family or household member” as defined in
98 §48-27-204 of this code.

99 (f) A person charged with a violation of this section may
100 not also be charged with a violation of subsection (b) or (c),
101 section nine of this article for the same act.

102 (g) No law-enforcement officer may be subject to any
103 civil or criminal action for false arrest or unlawful detention
104 for effecting an arrest pursuant to this section or pursuant to
105 §48-27-1002 of this code.

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CHAPTER 39

**(Com. Sub. for H. B. 2362 - By Delegates
Boggs, Perdue, Ashley and Barker)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §61-2-29b of the Code of West Virginia, 1931, as amended, relating to crimes against the elderly, protected persons or incapacitated persons; financial exploitation of the elderly, protected persons and incapacitated adults for misappropriating or misusing assets; permitting the prosecutor to cumulate amounts or values when charging; permitting banking institutions and others to report suspected financial exploitation to law-enforcement authorities and other entities; permitting financial institutions to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney; providing civil immunity for reporting; ordering restitution; and establishing the criminal penalty of larceny.

Be it enacted by the Legislature of West Virginia:

That §61-2-29b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.

- 1 (a) Financial exploitation occurs when a person
- 2 intentionally misappropriates or misuses the funds or assets

3 of an elderly person, protected person or incapacitated adult.
4 Any person who violates this section is guilty of larceny and
5 shall be ordered to pay restitution.

6 (b) In determining the value of the money, goods,
7 property or services referred to in subsection (a) of the
8 section, it shall be permissible to cumulate amounts or values
9 where such money, goods, property or services were
10 fraudulently obtained as part of a common scheme or plan.

11 (c) Financial institutions and their employees, as defined
12 by section one, article two-a, chapter thirty-one-a of this code
13 and as permitted by section four, subsection thirteen of that
14 article, others engaged in financially related activities as
15 defined by section one, article eight-c, chapter thirty-one-a of
16 this code, caregivers, relatives and other concerned persons
17 are permitted to report suspected cases of financial
18 exploitation to state or federal law-enforcement authorities,
19 the county prosecuting attorney and to the Department of
20 Health and Human Resources, Adult Protective Services
21 Division or Medicaid Fraud Division, as appropriate. Public
22 officers and employees are required to report suspected cases
23 of financial exploitation to the appropriate entities as stated
24 above. The requisite agencies shall investigate or cause the
25 investigation of the allegations.

26 (d) When financial exploitation is suspected and to the
27 extent permitted by federal law, financial institutions and
28 their employees or other business entities required by federal
29 law or regulation to file suspicious activity reports and
30 currency transaction reports shall also be permitted to
31 disclose suspicious activity reports or currency transaction
32 reports to the prosecuting attorney of any county in which the
33 transactions underlying the suspicious activity reports or
34 currency transaction reports occurred.

35 (e) Any person or entity that in good faith reports a
36 suspected case of financial exploitation pursuant to this
37 section is immune from civil liability founded upon making
38 that report.

39 (f) For the purposes of this section:

40 (1) “Incapacitated adult” means a person as defined by
41 section twenty-nine of this article;

42 (2) “Elderly person” means a person who is sixty-five
43 years or older; and

44 (3) “Protected person” means any person who is defined
45 as a “protected person” in subsection thirteen, section four,
46 article one, chapter forty-four-a of this code and who is
47 subject to the protections of chapter forty-four-a or forty-
48 four-c of this code.



CHAPTER 40

**(Com. Sub. for S. B. 93 - By Senators Laird,
Barnes, Green, Yost, Foster and Plymale)**

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §61-5-12b of the Code of West Virginia, 1931, as amended, relating to escape from custody of the Director of Juvenile Services; and penalties.

Be it enacted by the Legislature of West Virginia:

That §61-5-12b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile Services.

1 (a) Any person, under the age of eighteen years of age,
2 who escapes or attempts to escape from the custody of the
3 Director of Juvenile Services, regardless of where such
4 person is confined or where such escape occurs, is guilty of
5 a delinquent act and subject to the jurisdiction of the circuit
6 court of the county in which the escape occurred, pursuant to
7 section two, article five, chapter forty-nine of this code:
8 *Provided*, That upon agreement of all parties, the prosecution
9 of the escape may be transferred to the circuit court from
10 which the juvenile was originally committed.

11 (b) Any person, over the age of eighteen years of age or
12 any juvenile who has been transferred to the adult jurisdiction
13 of the committing court, who escapes or attempts to escape
14 from the custody of the Director of Juvenile Services,
15 regardless of where such person is confined or where such
16 escape or attempted escape occurs, is guilty of escape and, if
17 the person is detained or confined for an offense which is a
18 felony or would have been a felony if committed by an adult
19 is guilty of a felony and, upon conviction thereof, shall be
20 imprisoned in a state correctional facility not more than five
21 years. Any person, over the age of eighteen years of age or
22 any juvenile who has been transferred to the adult jurisdiction
23 of the committing court, who is detained for an offense which
24 is a misdemeanor or would have been a misdemeanor if
25 committed by an adult is guilty of a misdemeanor, and upon
26 conviction thereof, shall be confined in a regional jail for not
27 more than one year.

CHAPTER 41

**(Com. Sub. for H. B. 3144 - By Delegates Butcher,
Paxton, Manchin, Stowers, Hall, R. Phillips, L. Phillips,
Longstreth, Iaquina, Rodighiero and Perdue)**

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-15, relating to creating a criminal offense and adding misdemeanor criminal penalties for picketing or disrupting funerals or memorial services.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-15, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-15. Prohibition on certain demonstrations at funerals.

- 1 (a) No person may carry out, with respect to any
- 2 cemetery or building at which a funeral or memorial service
- 3 or ceremony is to be held, a demonstration within 500 feet of
- 4 the cemetery or building that:

5 (1) Is conducted during the period beginning 60 minutes
6 before and ending 60 minutes after the funeral or memorial
7 service or ceremony is held; and

8 (2) Includes, as a part of such demonstration, any
9 individual willfully making or assisting in the making of any
10 noise or diversion that disturbs or tends to disturb the peace
11 or good order of the funeral or memorial service or
12 ceremony.

13 (b) For purposes of this section, the term “demonstration”
14 includes the following:

15 (1) Any picketing or similar conduct.

16 (2) Any oration, speech, use of sound amplification
17 equipment or device, or similar conduct before an assembled
18 group of people that is not part of a funeral or memorial
19 service or ceremony.

20 (3) The display of any placard, banner, flag, or similar
21 device, unless such a display is part of a funeral or memorial
22 service or ceremony.

23 (4) The distribution of any handbill, pamphlet, leaflet, or
24 other written or printed matter other than a program
25 distributed as part of a funeral or memorial service or
26 ceremony.

27 (c) Any person who violates the provisions of subsection
28 (a) is guilty of a misdemeanor and, upon conviction thereof,
29 shall be confined in jail for an indeterminate sentence of not
30 more than one year and fined not less than \$200 nor more
31 than \$500.

CHAPTER 42

(Com. Sub. for H. B. 2451 - By Delegate Smith)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend reenact §61-11A-2 of the Code of West Virginia, 1931, as amended, relating to victim impact statements; including in the definition of “victim” the immediate family members or estate representative of a person killed during the commission of a misdemeanor; and providing that a prosecuting attorney make reasonable efforts to contact certain persons who are known to the prosecuting attorney.

Be it enacted by the Legislature of West Virginia:

That §61-11A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-2. Testimony of crime victim at sentencing hearing.

1 (a) For the purposes of this section, “victim” means a person
2 who is a victim of a felony, or, where a death occurs during the
3 commission of a felony or a misdemeanor, the fiduciary of a
4 deceased victim’s estate or a member of a deceased victim’s
5 immediate family, if known to the prosecutor.

6 (b) Prior to the imposition of sentence upon any
7 defendant who has been found guilty of a felony, or of a
8 misdemeanor if death occurs during the commission of a

9 crime, or has pleaded guilty or nolo contendere to any felony,
10 or to a misdemeanor if death occurs during the commission
11 of a crime, the court shall permit the victim of the crime to
12 appear before the court to make an oral statement for the
13 record if the victim notifies the court of his or her desire to
14 make such a statement after receiving notification provided
15 in subsection (c) of this section. If the victim fails to notify
16 the court, the failure is a waiver of the right to make an oral
17 statement. In lieu of the appearance and oral statement, the
18 victim may submit a written statement to the court or to the
19 probation officer in charge of the case. The probation officer
20 shall forthwith file the statement delivered to his or her office
21 with the sentencing court and the statement must be made a
22 part of the record at the sentencing hearing. The statement,
23 whether oral or written, must relate solely to the facts of the
24 case and the extent of injuries, financial losses and loss of
25 earnings directly resulting from the crime for which the
26 defendant is being sentenced.

27 (c) Within a reasonable time prior to the imposition of
28 sentence upon the defendant, the prosecuting attorney or
29 assistant prosecuting attorney in charge of the case shall
30 make reasonable efforts, in writing, to advise the person who
31 was the victim of the crime, the parent or guardian of a minor
32 who was the victim of a crime, the fiduciary of the victim's
33 estate if the victim is deceased and the immediate family
34 members of the victim if the victim is deceased and if their
35 whereabouts are known to the prosecutor or assistant
36 prosecutor. The writing will provide the date, time and place
37 of the original sentencing hearing and of the victim's right to
38 submit a written or oral statement to the sentencing court.

39 (d) The oral or written statement given or submitted by a
40 victim in accordance with the provisions of this section is in
41 addition to and not in lieu of the victim impact statement
42 required by the provisions of section three of this article.

CHAPTER 43

**(Com. Sub. for S. B. 186 - By Senators
Foster, Kessler (Acting President), Chafin, Hall,
Jenkins, Laird, Minard, Palumbo, Snyder,
Williams, Edgell, Wells, Unger, Browning,
Plymale, Miller, Nohe and Klempa)**

[Passed March 11, 2011; in effect thirty days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1G-1 and §62-1G-2, all relating to issuing a subpoena in aid of criminal investigations involving certain crimes against minors; providing legislative declaration of necessity; providing definitions; authorizing issuance of a subpoena upon reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense of a sexual nature against a minor upon written application therefor by law enforcement; providing definitions; requiring that certain information be provided in the subpoena; providing what information is to be disclosed in response to a subpoena; authorizing a fee for information provided in response to subpoena; providing for non-disclosure of subpoena or response to subpoena to account holder; and limiting liability of electronic communication systems or services, remote computing service providers, electronic service providers and telecommunications carriers.

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 §62-1G-1 and §62-1G-2, all to read as follows:

**ARTICLE 1G. SUBPOENA POWERS FOR AID OF
CRIMINAL INVESTIGATION
RELATING TO CERTAIN OFFENSES
AGAINST MINORS.**

§62-1G-1. Declaration of necessity.

1 It is declared, as a matter of legislative determination,
2 that it is necessary to grant subpoena powers in aid of
3 criminal investigations of certain crimes against minors
4 involving electronic communications systems or services or
5 remote computing services.

**§62-1G-2. Subpoenas for criminal investigations relating to
certain offenses against minors for records
concerning an electronic communications system
or service or remote computing service; content;
fee for providing information; and limiting
liability.**

1 (a) As used in this section:

2 (1)(A) “Electronic communication” means any transfer of
3 signs, signals, writing, images, sounds, data or intelligence of
4 any nature transmitted, in whole or in part, by a wire, radio,
5 electromagnetic, photoelectronic or photooptical system.

6 (B) “Electronic communication” does not include:

7 (i) Any oral communication;

8 (ii) Any communication made through a tone-only paging
9 device;

10 (iii) Any communication from a tracking device; or

11 (iv) Electronic funds transfer information stored by a
12 financial institution in a communications system used for the
13 electronic storage and transfer of funds.

14 (2) “Electronic communications service” means any
15 service which provides for users the ability to send or receive
16 wire or electronic communications.

17 (3) “Electronic communications system” means any wire,
18 radio, electromagnetic, photooptical or photoelectronic
19 facilities for the transmission of wire or electronic
20 communications, and any computer facilities or related
21 electronic equipment for the electronic storage of the
22 communication.

23 (4)(A) “Electronic service provider” means a person or
24 entity engaged in the business of providing computer
25 communications through which a consumer may obtain
26 access to the internet.

27 (B) “Electronic service provider” does not include a
28 common carrier if it provides only telecommunications
29 service.

30 (5) “Sexual offense against a minor” means:

31 (A) A violation or attempted violation of section five,
32 article eight-d, chapter sixty-one of this code;

33 (B) A sexual offense or attempted sexual offense
34 committed against a minor in violation of article eight-b,
35 chapter sixty-one of this code;

36 (C) The distribution and display or attempted distribution
37 and display of obscene materials to a minor in violation of
38 section two, article eight-a, chapter sixty-one of this code;

39 (D) The use or attempted use of obscene matter with the
40 intent to seduce a minor in violation of section four, article
41 eight-a, chapter sixty-one of this code;

42 (E) The employment or use or the attempted employment
43 or use of a minor to produce obscene materials in violation of
44 section five, article eight-a, chapter sixty-one of this code;

45 (F) The solicitation of a minor by use of a computer in
46 violation of section fourteen-b, article three-c, chapter sixty-
47 one of this code; or

48 (G) The use of a minor in filming sexually explicit
49 conduct in violation of sections two and three, article eight-c,
50 chapter sixty-one of this code.

51 (6) "Remote computing service" means the provision to
52 the public of computer storage or processing services by
53 means of an electronic communications system.

54 (b) When a law-enforcement agency is investigating a
55 sexual offense against a minor, an offense of stalking under
56 section nine-a, article two, chapter sixty-one of this code
57 when the victim is a minor or an offense of child kidnapping
58 under section fourteen, article two, chapter sixty-one of this
59 code, and has reasonable suspicion that an electronic
60 communications system or service or remote computing
61 service has been used in the commission of a sexual offense
62 against a minor as defined in this section, an offense of
63 stalking when the victim is a minor or an offense of child
64 kidnapping, a magistrate or a circuit court judge may issue a
65 subpoena, upon written application on a form approved by
66 the West Virginia Supreme Court of Appeals, to the
67 electronic communications system or service or remote
68 computing service provider that owns or controls the internet
69 protocol address, websites, electronic mail address or service
70 to a specific telephone number, requiring the production of

71 the following information, if available, upon providing in the
72 subpoena the internet protocol address, electronic mail
73 address, telephone number or other identifier, and the dates
74 and times the address, telephone number or other identifier
75 suspected of being used in the commission of the offense:

76 (1) Names;

77 (2) Addresses;

78 (3) Local and long distance telephone connections;

79 (4) Records of session times and durations;

80 (5) Length of service, including the start date and types
81 of service utilized;

82 (6) Telephone or other instrument subscriber numbers or
83 other subscriber identifiers, including any temporarily
84 assigned network address; and

85 (7) Means and sources of payment for the service,
86 including any credit card or bank account numbers.

87 (c) A subpoena issued under this section shall state that
88 the electronic communications system or service or remote
89 computing service provider shall produce only those records
90 listed in subdivisions (1) through (7) of subsection (b) of this
91 section, that are reasonably necessary to the investigation of
92 the suspected criminal activity or offense as described in the
93 subpoena: Provided, that the law-enforcement agency may
94 not examine the contents of electronic communications
95 without a warrant.

96 (d) (1) An electronic communications system or service
97 or remote computing service provider that provides
98 information in response to a subpoena issued under this

99 section may charge a fee, not to exceed the actual cost for
100 providing the information.

101 (2) The law-enforcement agency conducting the
102 investigation shall pay the fee.

103 (e) The electronic communications system or service or
104 remote computing service provider served with or responding
105 to the subpoena shall not disclose the existence of the
106 subpoena or its response to the subpoena to the account
107 holder identified in the subpoena.

108 (f) If the electronic communications system or service or
109 remote computing service provider served with the subpoena
110 does not own or control the internet protocol address,
111 websites or electronic mail address or provide service for the
112 telephone number that is a subject of the subpoena, the
113 provider shall:

114 (1) Notify the investigating law-enforcement agency that
115 it is not the provider of the service; and

116 (2) Provide to the investigating law-enforcement agency
117 any information the provider knows, through reasonable
118 effort, that it has regarding how to locate the electronic
119 service provider that does own or control the internet
120 protocol address, websites or electronic mail address, or
121 provides service for the telephone number.

122 (g) There shall be no cause of action against any
123 electronic communication system or service, remote
124 computing service provider, electronic service provider or
125 telecommunications carrier or its officers, employees, agents
126 or other specified persons for providing information, facilities
127 or assistance in accordance with the terms of the subpoena
128 issued under this section.

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129 (h) Applications for subpoenas authorized by this section
130 may be transmitted to the appropriate court by any means
131 permitted by rules promulgated by the West Virginia
132 Supreme Court of Appeals.

133 (i) The West Virginia Supreme Court of Appeals shall
134 prescribe a form to be used by law-enforcement agencies
135 applying for a subpoena authorized by this section.



CHAPTER 44

**(S. B. 184 - By Senators Wells, D. Facemire,
Williams, Yost, Sypolt, Jenkins, Unger,
Plymale, Hall, Laird, Minard and Klempa)**

[Passed February 4, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 1, 2011.]

AN ACT to amend and reenact §30-6-22 of the Code of West Virginia, 1931, as amended, relating to disposition of the remains of a deceased military service member who dies while serving in the United States armed forces.

Be it enacted by the Legislature of West Virginia:

That §30-6-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.**§30-6-22. Disposition of body of deceased person; penalty.**

1 (a) No public officer, employee, physician or surgeon, or
2 other person having a professional relationship with the
3 deceased, shall send or cause to be sent to an embalmer,
4 funeral director or crematory operator the body of a deceased
5 without first inquiring the desires of the next of kin or any
6 person who may be chargeable with the funeral expenses of
7 the deceased. If next of kin or person can be found, his or
8 her authority and direction shall be used as to the disposal of
9 the body of the deceased. The provisions of this subsection
10 are not applicable if the remains of the decedent are subject
11 to disposition pursuant to subsection (b) of this section.

12 (b) Notwithstanding any provision of this code to the
13 contrary, a United States Department of Defense Record of
14 Emergency Data Form (DD Form 93) executed by a
15 declarant who dies while serving in a branch of the United
16 States Military as defined in 10 U.S.C. §1481 constitutes a
17 valid form of declaration instrument and governs the
18 disposition of the declarant's remains. The person named in
19 the form as the person authorized to direct disposition of the
20 remains may arrange for the final disposition of the
21 declarant's last remains.

22 (c) A person who violates the provisions of this section
23 is guilty of a misdemeanor and, upon conviction thereof,
24 shall be fined not less than \$500 nor more than \$1,000, or
25 imprisoned not less than ten days nor more than ninety days,
26 or both.

CHAPTER 45

**(Com. Sub. for H. B. 3028 - By Delegates
Perdue, Fleischauer, Marshall, Williams,
Hatfield, Walters, Guthrie, Lawrence,
Ellington and Pasdon)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §48-25A-1, §48-25A-2 and §48-25A-3 of the Code of West Virginia, 1931, as amended, all relating to expanding the responsibilities of the Maternal Mortality Review Team to include infant mortality reviews; and renaming it the Infant and Maternal Mortality Review Team.

Be it enacted by the Legislature of West Virginia:

That §48-25A-1, §48-25A-2 and §48-25A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 25A. INFANT AND MATERNAL MORTALITY
REVIEW TEAM.**

§48-25A-1. Legislative findings.

1 The Legislature finds that there is a need for a process to
2 study the causes of infant and maternal deaths. It has been
3 found that comprehensive studies indicate that maternal
4 mortalities are more extensive than first appear on death
5 certificates.

6 The Legislature finds that more extensive studies of
7 infant mortalities and maternal mortalities would enable a
8 more developed plan to avoid these deaths in the future.

§48-25A-2. Infant and Maternal Mortality Review Team.

1 (a) The Maternal Mortality Review Team established
2 under the Office of Maternal Child and Family Health is
3 continued and renamed the Infant and Maternal Mortality
4 Review Team. The Infant and Maternal Mortality Review
5 Team is a multidisciplinary team created to review the deaths
6 of all infants and women who die during pregnancy, at the
7 time of birth or within one year of the birth of a child.

8 (b) The Infant and Maternal Mortality Review Team is to
9 consist of the following members, appointed by the
10 Governor:

11 (1) The Director of the Office of Maternal Child and
12 Family Health, who is to serve as the chairperson of the
13 Infant and Maternal Mortality Review Team and is
14 responsible for calling and coordinating all meetings;

15 (2) The Commissioner of the Bureau for Public Health or
16 a designee;

17 (3) The Chief Medical Examiner in the Bureau for Public
18 Health or a designee;

19 (4) The Director of the Division of Vital Statistics or a
20 designee;

21 (5) Representation from each of the three medical schools
22 in the state;

23 (6) The Director of Obstetrics, the Director of the
24 Neonatal Intensive Care Unit and the Director of Pediatrics
25 at each of the tertiary care hospitals in the state;

26 (7) One representative of the West Virginia State Medical
27 Association;

28 (8) One representative of the West Virginia Nurses
29 Association;

30 (9) One representative of the West Virginia Society of
31 Osteopathic Medicine;

32 (10) One representative of West Virginia Academy of
33 Family Physicians;

34 (11) One representative of the West Virginia Chapter of
35 the American College of Nurse Midwives;

36 (12) One representative of the West Virginia Chapter of
37 the American College of Obstetrics and Gynecology;

38 (13) One representative of the West Virginia Chapter of
39 the American Academy of Pediatrics;

40 (14) The Director of the Child Fatality Review Team; and

41 (15) Any additional person that the chair of the team
42 determines is needed on a particular case being considered.

43 (c) Each member serves for a term of five years. Of the
44 members of the commission first appointed, one shall be
45 appointed for a term ending June 30, 2009, and one each for
46 terms ending one, two, three and four years thereafter.

47 (d) Members of the Infant and Maternal Mortality
48 Review Team shall, unless sooner removed, continue to serve
49 until their respective terms expire and until their successors
50 have been appointed and have qualified.

51 (e) An appointment of a physician, whether for a full
52 term or to fill a vacancy, is to be made by the Governor from
53 among three nominees selected by the West Virginia State
54 Medical Association or the organization to be represented on
55 the team. When an appointment is for a full term, the
56 nomination is to be submitted to the Governor not later than
57 eight months prior to the date on which the appointment is to
58 become effective. In the case of an appointment to fill a
59 vacancy, the nominations are to be submitted to the Governor
60 within thirty days after the request for the nomination has
61 been made by the Governor to the chairperson or president of
62 the organization. When an association fails to submit to the
63 Governor nominations for the appointment in accordance
64 with the requirements of this section, the Governor may make
65 the appointment without nominations.

66 (f) Each member of the Infant and Maternal Mortality
67 Review Team shall serve without additional compensation
68 and may not be reimbursed for any expenses incurred in the
69 discharge of his or her duties under the provisions of this
70 article.

**§48-25A-3. Responsibilities of the Infant and Maternal
Mortality Review Team.**

1 (a) The Bureau for Public Health in consultation with the
2 Infant and Maternal Mortality Review Team shall, pursuant
3 to the provisions of article three, chapter twenty-nine-a,
4 promulgate rules applicable to the following:

5 (1) The standard procedures for the establishment,
6 formation and conduct of the Infant and Maternal Mortality
7 Review Team; and

8 (2) The protocols for the review of infant and maternal
9 mortalities.

10 (b) The Infant and Maternal Mortality Review Team
11 shall:

12 (1) Review deaths of all infants and of all women who
13 die during pregnancy, at the time of birth or within one year
14 of the birth of a child;

15 (2) Establish the trends, patterns and risk factors;

16 (3) Provide statistical analysis regarding the causes of
17 infant and maternal fatalities in West Virginia; and

18 (4) Promote public awareness of the incidence and causes
19 of infant and maternal fatalities, including recommendations
20 for their reduction.

21 (c) The Infant and Maternal Mortality Review Team shall
22 submit an annual report to the Governor and to the
23 Legislature concerning its activities and the incidents of
24 infant and maternal fatalities within the state. The report is
25 due annually on December 1. The report is to include
26 statistics setting forth the number of infant and maternal
27 fatalities, identifiable trends in infant and maternal fatalities
28 in the state, including possible causes, if any, and
29 recommendations to reduce the number of preventable infant
30 and maternal fatalities in the state. The report is to also
31 include the number of infant and mothers whose deaths have
32 been determined to have been unexpected or unexplained.

33 (d) The Infant and Maternal Mortality Review Team, in
34 the exercise of its duties as defined in this section, may not:

35 (1) Call witnesses or take testimony from individuals
36 involved in the investigation of an infant or maternal fatality;

37 (2) Contact a family member of the deceased infant or
38 mother, except if a member of the team is involved in the

39 investigation of the death and must contact a family member
40 in the course of performing his or her duties outside of the
41 team; or

42 (3) Enforce any public health standard or criminal law or
43 otherwise participate in any legal proceeding, except if a
44 member of the team is involved in the investigation of the
45 death or resulting prosecution and must participate in a legal
46 proceeding in the course of performing in his or her duties
47 outside of the team.

48 (e) Proceedings, records and opinions of the Infant and
49 Maternal Mortality Review Team are confidential, in
50 accordance with section one, article seven, chapter forty-nine
51 of this code, and are not subject to discovery, subpoena or
52 introduction into evidence in any civil or criminal
53 proceeding. Nothing in this subsection is to be construed to
54 limit or restrict the right to discover or use in any civil or
55 criminal proceeding anything that is available from another
56 source and entirely independent of the proceedings of the
57 Infant and Maternal Mortality Review Team.

58 (f) Members of the Infant and Maternal Mortality Review
59 Team may not be questioned in any civil or criminal
60 proceeding regarding information presented in or opinions
61 formed as a result of a meeting of the team. Nothing in this
62 subsection prevents a member of the Infant and Maternal
63 Mortality Review Team from testifying to information
64 obtained independently of the team or which is public
65 information.

CHAPTER 46

**(Com. Sub. for S. B. 461 - By Senators Laird,
Snyder, Jenkins, Kessler (Acting President),
Plymale, Miller, Wills, Nohe and Unger)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §48-27-903 of the Code of West Virginia, 1931, as amended, relating to criminalizing a violation of a restraining order entered upon a conviction for stalking or harassment; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 27. PREVENTION AND TREATMENT OF
DOMESTIC VIOLENCE.**

**§48-27-903. Misdemeanor offenses for violation of protective
order; repeat offenses; penalties.**

1 (a) A person is guilty of a misdemeanor if the person
2 knowingly and willfully violates:

3 (1) A provision of an emergency or final protective order
4 entered pursuant to:

5 (A) Subsection (a) or (b) of section five hundred two of this
6 article;

7 (B) If the court has ordered such relief; subsection (2),
8 (7), (9), or (14) of section five hundred three of this article;

9 (C) Subsection (b) or (c) of section five hundred nine,
10 article five of this chapter; or (D) subsection (b) or (c) of
11 section six hundred eight, article five of this chapter;

12 (2) A condition of bail, probation or parole which has the
13 express intent or effect of protecting the personal safety of a
14 particular person or persons; or

15 (3) A restraining order entered pursuant to section nine-a,
16 article two, chapter sixty-one of this code.

17 Upon conviction thereof the person shall be confined in
18 jail for a period of not less than one day nor more than one
19 year, which jail term shall include actual confinement of not
20 less than twenty-four hours, and shall be fined not less than
21 \$250 nor more than \$2,000.

22 (b) Any person who is convicted of a second offense
23 under subsection (a) of this section is guilty of a
24 misdemeanor and, upon conviction thereof, shall be confined
25 in jail for not less than three months nor more than one year,
26 which jail term shall include actual confinement of not less
27 than thirty days, and fined not less than \$500 nor more than
28 \$3,000, or both.

29 (c) A respondent who is convicted of a third or
30 subsequent offense under subsection (a) which the violation
31 occurs within ten years of a prior conviction of this offense
32 is guilty of a misdemeanor and, upon conviction thereof,
33 shall be confined in jail not less than six months nor more
34 than one year, which jail term shall include actual
35 confinement of not less than six months, and fined not less
36 than \$500 nor more than \$4,000.

CHAPTER 47

**(Com. Sub. for H. B. 3054 - By Delegates
Miley, Longstreth, Fleischauer, Skaff,
Hamilton, Sobonya and C. Miller)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §15-2B-15 and §15-2B-16, all relating to the collection and use of DNA data generally; providing for the collection of DNA samples from certain persons; providing for a penalty of contempt for a person refusing to furnish a DNA sample pursuant to a court order; and authorizing the West Virginia State Police to collect certain fees for DNA testing.

Be it enacted by the Legislature of West Virginia:

That §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 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 §15-2B-15 and §15-2B-16, all to read as follows:

ARTICLE 2B. DNA DATA.***§15-2B-3. Definitions.**

1 As used in this article:

2 (1) "CODIS" means the Federal Bureau of Investigation's
3 Combined DNA Index System that allows the storage and
4 exchange of DNA records submitted by federal, state and local
5 forensic DNA laboratories. The term "CODIS" includes the
6 National DNA Index System administered and operated by the
7 Federal Bureau of Investigation.

8 (2) "Conviction" includes convictions by a jury or court,
9 guilty plea, or plea of nolo contendere.

10 (3) "Criminal justice agency" means an agency or
11 institution of a federal, state or local government, other than
12 the office of public defender, which performs as part of its
13 principal function, relating to the apprehension, investigation,
14 prosecution, adjudication, incarceration, supervision or
15 rehabilitation of criminal offenders.

16 (4) "Division" means the West Virginia State Police.

17 (5) "DNA" means deoxyribonucleic acid. DNA is
18 located in the nucleus of cells and provides an individual's
19 personal genetic blueprint. DNA encodes genetic information
20 that is the basis of human heredity and forensic identification.

21 (6) "DNA record" means DNA identification information
22 stored in any state DNA database pursuant to this article. The
23 DNA record is the result obtained from DNA typing tests. The
24 DNA record is comprised of the characteristics of a DNA
25 sample which are of value in establishing the identity of
26 individuals. The results of all DNA identification tests on an
27 individual's DNA sample are also included as a "DNA record".

*CLERK'S NOTE: This section was also amended by Com. Sub. for H. B. 2539
(Chapter 160) which passed subsequent to this act.

28 (7) "DNA sample" means a tissue, fluid or other bodily
29 sample, suitable for testing, provided pursuant to this article
30 or submitted to the division laboratory for analysis pursuant
31 to a criminal investigation.

32 (8) "FBI" means the Federal Bureau of Investigation.

33 (9) "Interim plan" means the plan used currently by the
34 Federal Bureau of Investigation for Partial Match Protocol
35 and to be adopted under the management rules of this article.

36 (10) "Management rules" means the rules promulgated
37 by the West Virginia State Police that define all policy and
38 procedures in the administration of this article.

39 (11) "Partial match" means that two DNA profiles, while
40 not an exact match, share a sufficient number of
41 characteristics to indicate the possibility of a biological
42 relationship.

43 (12) "Qualifying offense" means any felony offense as
44 described in section six of this article or any offense requiring
45 a person to register as a sex offender under this code or the
46 federal law. For the purpose of this article, a person found
47 not guilty of a qualifying offense by reason of insanity or
48 mental disease or defect shall be required to provide a DNA
49 sample in accordance with this article.

50 (13) "Registering Agency" means the West Virginia State
51 Police.

52 (14) "State DNA database" means all DNA identification
53 records included in the system administered by the West
54 Virginia State Police.

55 (15) "State DNA databank" means the repository of DNA
56 samples collected under the provisions of this article.

§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.

1 (a) Any person convicted of an offense described in section
2 one, four, seven, nine, nine-a (when that offense constitutes a
3 felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article
4 two, chapter sixty-one of this code or section twelve, article
5 eight of said chapter (when that offense constitutes a felony),
6 shall provide a DNA sample to be used for DNA analysis as
7 described in this article. Further, any person convicted of any
8 offense described in article eight-b or eight-d of said chapter
9 shall provide a DNA sample to be used for DNA analysis as
10 described in this article.

11 (b) Any person presently incarcerated in a state
12 correctional facility or in jail in this state after conviction of
13 any offense listed in subsection (a) of this section shall
14 provide a DNA sample to be used for purposes of DNA
15 analysis as described in this article.

16 (c) Any person convicted of a violation of section five or
17 thirteen, article two, chapter sixty-one of this code, section
18 one, two, three, four, five, seven, eleven, twelve (when that
19 offense constitutes a felony) or subsection (a), section
20 thirteen, article three of said chapter, section three, four, five
21 or ten, article three-e of said chapter or section three, article
22 four of said chapter, shall provide a DNA sample to be used
23 for DNA analysis as described in this article.

24 (d) Any person convicted of an offense which constitutes
25 a felony violation of the provisions of article four, chapter
26 sixty-a of this code; or of an attempt to commit a violation of
27 section one or section fourteen-a, article two, chapter
28 sixty-one of this code; or an attempt to commit a violation of
29 article eight-b of said chapter shall provide a DNA sample to
30 be used for DNA analysis as described in this article.

31 (e) The method of taking the DNA sample is subject to
32 the testing methods used by the West Virginia State Police
33 Crime Lab. The DNA sample will be collected using a
34 postage paid DNA collection kit provided by the West
35 Virginia State Police.

36 (f) When a person required to provide a DNA sample
37 pursuant to this section refuses to comply, the state shall
38 apply to a circuit court for an order requiring the person to
39 provide a DNA sample. Upon a finding of failure to comply,
40 the circuit court shall order the person to submit to DNA
41 testing in conformity with the provisions of this article.

42 (g) The West Virginia State Police may, where not
43 otherwise mandated, require any person convicted of a felony
44 offense under the provisions of this code, to provide a DNA
45 sample to be used for the sole purpose of criminal
46 identification of the convicted person who provided the
47 sample: *Provided*, That the person is under the supervision of
48 the criminal justice system at the time the request for the
49 sample is made. Supervision includes prison, the regional
50 jail system, parole, probation, home confinement, community
51 corrections program, and work release.

52 (h) On the effective date of the amendments to this
53 section enacted during the regular session of the Legislature
54 in 2011, any person required to register as a sex offender in
55 this state and who has not already provided a DNA sample in
56 accordance with this article, shall provide a DNA sample as
57 determined by the registration agency in consultation with the
58 West Virginia State Police Laboratory. The registering
59 agency is responsible for the collection and submission of the
60 sample under this article.

61 (i) When this state accepts a person from another state
62 under any interstate compact, or under any other reciprocal
63 agreement with any county, state or federal agency or any
64 other provision of law whether or not the person is confined

65 or released, the transferred person must submit a DNA
66 sample, if the person was convicted of an offense in any other
67 jurisdiction which would be considered a qualifying offense
68 as defined in section six if committed in this state, or if the
69 person was convicted of an equivalent offense in any other
70 jurisdiction. The person shall provide the DNA sample in
71 accordance with the rules of the custodial institution or
72 supervising agency. If the transferred person has already
73 submitted a DNA sample that can be found in the national
74 database, the accepting agency is not required to draw a
75 second DNA sample.

76 (j) If a person convicted of a qualifying offense is
77 released without giving a DNA sample due to an oversight or
78 error or because of the person's transfer from another
79 jurisdiction, the person shall give a DNA sample for
80 inclusion in the state DNA database after being notified of
81 this obligation. Any such person may request a copy of the
82 court order requiring the sample prior to the collection of the
83 DNA sample.

§15-2B-7. Tests to be performed on DNA sample.

1 The tests to be performed on each DNA sample shall
2 analyze and type the genetic markers contained in or derived
3 from the DNA sample in accordance with rules promulgated
4 under this article. Any rule regarding the typing and analysis
5 of the DNA sample shall be consistent with any
6 specifications required by federal law.

§15-2B-9. Procedures for withdrawal of blood sample for DNA analysis and for conducting analysis.

1 (a) Upon incarceration, the Division of Corrections,
2 regional jails and felon facilities shall ensure that the DNA
3 sample is collected from all persons described in section six
4 of this article. When any person convicted of an offense
5 described in section six is not incarcerated, the sheriff in the

6 county where the person is convicted shall ensure that the
7 DNA sample is collected from the person: *Provided*, That a
8 DNA sample may be collected at a prison, regional facility or
9 local hospital unit when so ordered by the sentencing court or
10 other location determined by the sheriff.

11 (b) The Superintendent of the West Virginia State Police
12 shall promulgate a legislative rule pursuant to chapter
13 twenty-nine-a of this code establishing which persons may
14 withdraw blood and further establishing procedures to
15 withdraw blood. At a minimum, these procedures shall
16 require that when blood is withdrawn for the purpose of DNA
17 identification testing, a previously unused and sterile needle
18 and sterile vessel shall be used, the withdrawal shall
19 otherwise be in strict accord with accepted medical practices
20 and in accordance with any recognized medical procedures
21 employing universal precautions as outlined by the Centers
22 for Disease Control and Prevention. No civil liability
23 attaches to any person when the blood was drawn according
24 to recognized medical procedures employing the universal
25 precautions. No person is relieved of liability for negligence
26 in the drawing of blood for purposes of DNA testing.

27 (c) The Superintendent of the West Virginia State Police
28 shall promulgate legislative rules pursuant to chapter
29 twenty-nine-a of this code governing the procedures to be
30 used in the collection of DNA samples, submission,
31 identification, analysis and storage of DNA samples and
32 typing results of DNA samples submitted under this article
33 which shall be compatible with recognized federal standards.

34 (d) The agency having control, custody or supervision of
35 persons convicted for qualifying offenses may, in
36 consultation with and approval of the West Virginia State
37 Police Laboratory, promulgate rules or policies specifying the
38 time and manner of collection of the DNA samples as well as
39 any other matter necessary to carry out its responsibilities
40 under this article.

41 (e) The agency or institution having custody, control or
42 providing supervision of persons convicted for qualifying
43 offenses, as appropriate, is authorized to contract with third
44 parties to provide for the collection of the DNA samples
45 described in section six of this article.

46 (f) A person, convicted of a qualifying offense and not
47 incarcerated in a facility described in subsection (a) of this
48 section, who has been put on notice of his or her obligation
49 to provide a DNA sample and has not submitted a court
50 ordered DNA sample at the request of a law-enforcement
51 agency, shall be responsible for notifying the agency
52 designated in the court order and complying with that
53 agency's directives for submitting a DNA sample. The
54 person shall have thirty days from the receipt of the court
55 order to comply unless there is a documented exception from
56 the agency responsible for the DNA sample collection. A
57 person refusing to comply with a court order directing that
58 person submit a DNA sample may be considered in
59 contempt.

60 (g) Any court sentencing a person convicted of a
61 qualifying offense to probation, on or after the effective date
62 of the amendments to this section enacted during the regular
63 session of the Legislature in 2011, shall order, as a condition
64 of such probation, that the convicted person report to the
65 local sheriff's department to provide a DNA sample within
66 thirty days.

§15-2B-10. DNA database exchange.

1 (a) The West Virginia State Police shall receive DNA
2 samples, store, analyze, classify and file the DNA records
3 consisting of all identification characteristics of DNA profiles
4 from DNA samples submitted pursuant to the procedures for
5 conducting DNA analysis of DNA samples.

6 (b) The West Virginia State Police may furnish DNA
7 records to authorized law-enforcement and governmental
8 agencies of the United States and its territories, of foreign
9 countries duly authorized to receive them, of other states
10 within the United States and of the State of West Virginia
11 upon proper request stating that the DNA records requested
12 will be used solely:

13 (1) For law-enforcement identification purposes by
14 criminal justice agencies;

15 (2) In judicial proceedings, if otherwise expressly
16 permitted by state or federal laws;

17 (3) If personal identifying information is removed, for a
18 population statistics database, for identification research and
19 protocol development purposes, or for quality control
20 purposes; or

21 (4) For the identification of unidentified human remains,
22 missing persons and relatives of missing persons.

23 (c) The Superintendent of the West Virginia State Police
24 shall promulgate legislative rules pursuant to chapter
25 twenty-nine-a of this code governing the methods by which
26 any law-enforcement agency or other authorized entity may
27 obtain information from the state DNA database consistent
28 with this section and federal law.

29 (d) The West Virginia State Police may release DNA
30 samples, without personal identifying information, to any
31 agency or entity with which the West Virginia State Police
32 contracts pursuant to section five of this article.

33 (e) The West Virginia State Police may release DNA
34 samples for criminal defense and appeal purposes, to a
35 defendant who is entitled to access to samples and analysis

36 performed in connection with the case in which the defendant
37 is charged or was convicted.

38 (f) Searches of the state DNA database shall be
39 performed in accordance with state and federal law and
40 procedures.

**§15-2B-12. Confidentiality; unauthorized uses of DNA
databank; penalties.**

1 (a) All DNA profiles and samples submitted to the West
2 Virginia State Police pursuant to this article shall be treated
3 as confidential except as provided in this article.

4 (b) Any person who, by virtue of employment or official
5 position has possession of or access to individually identifiable
6 DNA information contained in the state DNA database or
7 databank and who willfully discloses it in any manner to any
8 person or agency not entitled to receive it is guilty of a
9 misdemeanor and, upon conviction thereof, shall be fined not
10 less than \$50 nor more than \$500 or confined in jail for a
11 period not to exceed one year, or both fined and confined.

12 (c) Any person who, without authorization, willfully
13 obtains individually identifiable DNA information from the
14 state DNA database or databank is guilty of a misdemeanor
15 and, upon conviction thereof, shall be fined not less than \$50
16 nor more than \$500 or confined in jail for a period not to
17 exceed one year, or both fined and confined.

18 (d) DNA records and DNA samples submitted to the
19 West Virginia State Police Laboratory pursuant to this article
20 are exempt from disclosure under the provisions of article
21 one, chapter twenty-nine-b of this code, or any other statutory
22 provision or court opinion requiring the disclosure of public
23 records.

24 (e) In case of a criminal proceeding, a request to access
25 a person's DNA record must be made in accordance with
26 rules for criminal discovery as provided in the West Virginia
27 Code and the Rules of Criminal Procedure. The West
28 Virginia State Police Laboratory is not required to provide,
29 for criminal discovery purposes, more than the DNA
30 profile(s) and identifying information generated as a result of
31 the search that led to the match between the case evidence
32 and the defendant.

§15-2B-15. Collection of fees to cover the cost of DNA profile entry into the DNA database and DNA databank; cost of collecting and analyzing DNA sample.

1 For persons convicted after July 1, 2011, a mandatory fee
2 of \$150, which is in addition to any other costs imposed
3 pursuant to statutory authority, shall automatically be
4 assessed on any person convicted of, or adjudicated
5 delinquent for, a qualifying offense, unless the court finds
6 that undue hardship would result. This fee shall be collected
7 by the sentencing court or the agency responsible for the
8 collection of the DNA sample and remitted to the State
9 Treasury on or before the tenth of every month.
10 Notwithstanding any other provision of this code to the
11 contrary, all moneys collected as a result of this fee shall be
12 deposited in a special account within the State Treasury to be
13 known as the "West Virginia State Police DNA Database
14 Account" to be administered by the Superintendent of the
15 West Virginia State Police. Expenditures from the fund are
16 authorized from collections for purposes associated with the
17 processing of DNA samples for the DNA database.

§15-2B-16. Partial matches and the DNA database.

1 The Division may use the data in the DNA database for
2 partial match analysis for criminal investigations of murder,
3 kidnapping and first and second degree sexual assault, as

4 defined in this code, where all investigated leads have been
5 exhausted. The Division shall follow the standards and
6 procedures defined in the Interim Plan when replying to
7 requests for partial match information from criminal justice
8 agencies from within or outside the state until such time as
9 the Division promulgates management rules.

CHAPTER 48

**(S. B. 328 - By Senators Beach,
Klempa and Plymale)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17E-1-14a, all relating to the issuance, disqualification, suspension and revocation of driver's licenses and privilege to operate a commercial motor vehicle; adding definitions; creating the offense of operating a commercial motor vehicle while texting; providing penalties and exceptions; establishing disqualification penalties for 2nd, 3rd or subsequent offenses; providing civil penalties for motor carriers who require or allow a driver to operate a commercial motor vehicle while texting; providing that a driver is disqualified from operating a commercial motor vehicle upon conviction for operating a commercial motor vehicle when texting; clarifying that out-of-service orders may pertain to a driver, commercial motor vehicle or a motor carrier operation; providing that the licensed driver accompanying a driver

holding an instruction permit must be alert and unimpaired; adding additional certifications to the application and the face of a commercial driver's license; providing for additional requirements related to maintenance and verification of medical certification status; including the United Mexican States as an entity that the commissioner is required to provide driving record information; and prohibiting the division from issuing or renewing a commercial driver's license to a person who does not possess a valid medical certification status.

Be it enacted by the Legislature of West Virginia:

That §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20 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 §17E-1-14a, all to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol,
5 including, but not limited to, ethanol, methanol, propenyl and
6 isopropanol;

7 (B) Beer, ale, port or stout and other similar fermented
8 beverages, including sake or similar products, of any name or
9 description containing one half of one percent or more of
10 alcohol by volume, brewed or produced from malt, wholly or
11 in part, or from any substitute for malt;

12 (C) Distilled spirits or that substance known as ethyl
13 alcohol, ethanol or spirits of wine in any form including all
14 dilutions and mixtures thereof from whatever source or by
15 whatever process produced; or

16 (D) Wine of not less than one half of one percent of
17 alcohol by volume.

18 (2) "Alcohol concentration" means:

19 (A) The number of grams of alcohol per one hundred
20 milliliters of blood;

21 (B) The number of grams of alcohol per two hundred ten
22 liters of breath;

23 (C) The number of grams of alcohol per sixty-seven
24 milliliters of urine; or

25 (D) The number of grams of alcohol per eighty-six
26 milliliters of serum.

27 (3) "At fault traffic accident" means, for the purposes of
28 waiving the road test, a determination of fault by the official
29 filing the accident report as evidenced by an indication of
30 contributing circumstances in the accident report.

31 (4) "Commercial driver's license" means a license or an
32 instruction permit issued in accordance with the requirements
33 of this article to an individual which authorizes the individual
34 to drive a class of commercial motor vehicle.

35 (5) "Commercial driver's license information system" is
36 the information system established pursuant to the Federal
37 Commercial Motor Vehicle Safety Act to serve as a
38 clearinghouse for locating information related to the licensing
39 and identification of commercial motor vehicle drivers.

40 (6) “Commercial driver instruction permit” means a
41 permit issued pursuant to subsection (d), section nine of this
42 article.

43 (7) “Commercial motor vehicle” means a motor vehicle
44 designed or used to transport passengers or property:

45 (A) If the vehicle has a gross combination vehicle weight
46 rating of twenty-six thousand one pounds or more inclusive
47 of a towed unit(s) with a gross vehicle weight rating of more
48 than ten thousand pounds;

49 (B) If the vehicle has a gross vehicle weight rating of
50 twenty-six thousand one pounds or more;

51 (C) If the vehicle is designed to transport sixteen or more
52 passengers, including the driver; or

53 (D) If the vehicle is of any size and transporting
54 hazardous materials as defined in this section.

55 (8) “Commissioner” means the Commissioner of Motor
56 Vehicles of this state.

57 (9) “Controlled substance” means any substance
58 classified under the provisions of chapter sixty-a of this code,
59 the Uniform Controlled Substances Act, and includes all
60 substances listed on Schedules I through V, inclusive, of
61 article two of said chapter, as revised. The term “controlled
62 substance” also has the meaning such term has under 21
63 U.S.C. §802.6 and includes all substances listed on
64 Schedules I through V of 21 C.F.R. §1308 as they may be
65 amended by the United States Department of Justice.

66 (10) “Conviction” means an unvacated adjudication of
67 guilt; a determination that a person has violated or failed to
68 comply with the law in a court of original jurisdiction or by

69 an authorized administrative tribunal or proceeding; an
70 unvacated forfeiture of bail or collateral deposited to secure
71 the persons appearance in court; a plea of guilty or nolo
72 contendere accepted by the court or the payment of a fine or
73 court cost or violation of a condition of release without bail
74 regardless of whether or not the penalty is rebated,
75 suspended, or probated.

76 (11) "Division" means the Division of Motor Vehicles.

77 (12) "Disqualification" means any of the following three
78 actions:

79 (A) The suspension, revocation, or cancellation of a
80 driver's license by the state or jurisdiction of issuance.

81 (B) Any withdrawal of a person's privilege to drive a
82 commercial motor vehicle by a state or other jurisdiction as
83 the result of a violation of state or local law relating to motor
84 vehicle traffic control other than parking or vehicle weight
85 except as to violations committed by a special permittee on
86 the coal resource transportation system or vehicle defect
87 violations.

88 (C) A determination by the Federal Motor Carrier Safety
89 Administration that a person is not qualified to operate a
90 commercial motor vehicle under 49 C.F.R. Part §391 (2004).

91 (13) "Drive" means to drive, operate or be in physical
92 control of a motor vehicle in any place open to the general
93 public for purposes of vehicular traffic. For the purposes of
94 sections twelve, thirteen and fourteen of this article, "drive"
95 includes operation or physical control of a motor vehicle
96 anywhere in this state.

97 (14) "Driver" means a person who drives, operates or is
98 in physical control of a commercial motor vehicle in any

99 place open to the general public for purposes of vehicular
100 traffic or who is required to hold a commercial driver's
101 license.

102 (15) "Driver's license" means a license issued by a state
103 to an individual which authorizes the individual to drive a
104 motor vehicle of a specific class.

105 (16) "Electronic device" includes, but is not limited to, a
106 cellular telephone, personal digital assistant, pager or any
107 other device used to input, write, send, receive, or read text.

108 (17) "Employee" means an operator of a commercial
109 motor vehicle, including full time, regularly employed
110 drivers, casual, intermittent or occasional drivers, leased
111 drivers and independent, owner-operator contractors when
112 operating a commercial motor vehicle, who are either directly
113 employed by or under lease to drive a commercial motor
114 vehicle for an employer.

115 (18) "Employer" means a person, including the United
116 States, a state or a political subdivision of a state, who owns
117 or leases a commercial motor vehicle or assigns a person to
118 drive a commercial motor vehicle.

119 (19) "Endorsement" means an authorization to a person
120 to operate certain types of commercial motor vehicles.

121 (20) "Farm vehicle" includes a motor vehicle or
122 combination vehicle registered to a farm owner or entity
123 operating the farm and used exclusively in the transportation
124 of agricultural or horticultural products, livestock, poultry
125 and dairy products from the farm or orchard on which they
126 are raised or produced to markets, processing plants, packing
127 houses, canneries, railway shipping points and cold storage
128 plants and in the transportation of agricultural or horticultural
129 supplies and machinery to the farms or orchards to be used
130 on the farms or orchards.

131 (21) “Farmer” includes an owner, tenant, lessee, occupant
132 or person in control of the premises used substantially for
133 agricultural or horticultural pursuits who is at least eighteen
134 years of age with two years licensed driving experience.

135 (22) “Farmer vehicle driver” means the person employed
136 and designated by the “farmer” to drive a “farm vehicle” as
137 long as driving is not his or her sole or principal function on
138 the farm and who is at least eighteen years of age with two
139 years licensed driving experience.

140 (23) “Felony” means an offense under state or federal law
141 that is punishable by death or imprisonment for a term
142 exceeding one year.

143 (24) “Gross combination weight rating (GCWR)” means
144 the value specified by the manufacturer as the loaded weight
145 of a combination, articulated vehicle. In the absence of a
146 value specified by the manufacturer, GCWR will be
147 determined by adding the gross vehicle weight rating
148 (GVWR) of the power unit and the total weight of the towed
149 unit and load, if any.

150 (25) “Gross vehicle weight rating (GVWR)” means the
151 value specified by the manufacturer as the loaded weight of
152 a single vehicle. In the absence of a value specified by the
153 manufacturer, the GVWR will be determined by the total
154 weight of the vehicle and load, if any.

155 (26) “Hazardous materials” means any material that has
156 been designated as hazardous under 49 U.S.C. §5103 and is
157 required to be placarded under subpart F of 49 C.F.R., Part
158 §172 or any quantity of a material listed as a select agent or
159 toxin in 42 C.F.R., Part §73.

160 (27) “Imminent hazard” means existence of a condition
161 that presents a substantial likelihood that death, serious
162 illness, severe personal injury or a substantial endangerment

163 to health, property or the environment may occur before the
164 reasonably foreseeable completion date of a formal
165 proceeding begun to lessen the risk of that death, illness,
166 injury or endangerment.

167 (28) "Issuance of a license" means the completion of a
168 transaction signifying that the applicant has met all the
169 requirements to qualify for, including, but not limited to: The
170 initial issuance of a driver's license, the renewal of a driver's
171 license, the issuance of a duplicate license as a replacement
172 to a lost or stolen driver's license, the transfer of any level of
173 driving privileges including the privilege of operating a
174 commercial motor vehicle from another state or jurisdiction,
175 the changing of driver's license class, restrictions or
176 endorsements or the change of any other information
177 pertaining to an applicant either appearing on the face of a
178 driver's license or within the driver record of the licensee
179 maintained by the division.

180 (29) "Motor vehicle" means every vehicle which is self-
181 propelled and every vehicle which is propelled by electric
182 power obtained from overhead trolley wires but not operated
183 upon rails.

184 (30) "Noncommercial motor vehicle" means a motor
185 vehicle or combination of motor vehicles not defined by the
186 term "commercial motor vehicle".

187 (31) "Out-of-service order" means a declaration by an
188 authorized enforcement officer of a federal, state, Canadian,
189 Mexican, county or local jurisdiction including any special
190 agent of the Federal Motor Carrier Safety Administration that
191 a driver, a commercial motor vehicle, or a motor carrier
192 operation is out of service pursuant to 49 C.F.R. §§386.72,
193 392.5, 395.13, 396.9 or compatible laws or the North
194 American uniform out-of-service criteria that an imminent
195 hazard exists.

196 (32) “Violation of an out-of-service order” means:

197 (A) The operation of a commercial motor vehicle during
198 the period the driver was placed out-of-service;

199 (B) The operation of a commercial motor vehicle by a
200 driver after the vehicle was placed out-of-service and before
201 the required repairs are made; or

202 (C) The operation of any commercial vehicle by a motor
203 carrier operation after the carrier has been placed out of
204 service.

205 (33) “School bus” means a commercial motor vehicle
206 used to transport preprimary, primary or secondary school
207 students from home-to-school, from school-to-home or to
208 and from school sponsored events. School bus does not
209 include a bus used as a common carrier.

210 (34) “Serious traffic violation” means conviction for any
211 of the following offenses when operating a commercial motor
212 vehicle:

213 (A) Excessive speeding involving any single offense for
214 any speed of fifteen miles per hour or more above the posted
215 limits;

216 (B) Reckless driving as defined in section three, article
217 five, chapter seventeen-c of this code and careless or
218 negligent driving, including, but not limited to, the offenses
219 of driving a commercial motor vehicle in willful or wanton
220 disregard for the safety of persons or property;

221 (C) Erratic or improper traffic lane changes including, but
222 not limited to, passing a school bus when prohibited,
223 improper lane changes and other passing violations;

224 (D) Following the vehicle ahead too closely;

225 (E) Driving a commercial motor vehicle without
226 obtaining a commercial driver's license;

227 (F) Driving a commercial motor vehicle without a
228 commercial driver's license in the driver's possession.
229 However, any person who provides proof to the law-
230 enforcement agency that issued the citation, by the date the
231 person must appear in court or pay any fine for such
232 violation, that the person held a valid commercial driver's
233 license on the date the citation was issued, shall not be guilty
234 of this offense;

235 (G) Driving a commercial motor vehicle without the
236 proper class of commercial driver's license or endorsements
237 for the specific vehicle group being operated or for the
238 passengers or type of cargo being transported;

239 (H) A violation of state or local law relating to motor
240 vehicle traffic control, other than a parking violation, arising
241 in connection with a fatal traffic accident; or

242 (I) Any other serious violations determined by the United
243 States Secretary of Transportation.

244 (J) Vehicle defects are excluded as serious traffic
245 violations except as to violations committed by a special
246 permittee on the coal resource transportation road system.

247 (35) "State" means a state of the United States and the
248 District of Columbia or a province or territory of Canada or
249 a state or federal agency of the United Mexican States.

250 (36) "State of domicile" means the state where a person
251 has his or her true, fixed and permanent home and principle
252 residence and to which he or she has the intention of
253 returning whenever absent in accordance with chapter
254 seventeen-a, article three, section one-a.

255 (37) “Suspension, revocation or cancellation” of a
256 driver’s license or a commercial driver’s license means the
257 privilege to operate any type of motor vehicle on the roads
258 and highways of this state is withdrawn.

259 (38) “Tank vehicle” means any commercial motor
260 vehicle that is designed to transport any liquid or gaseous
261 materials within a tank that is either permanently or
262 temporarily attached to the vehicle or the chassis. These
263 vehicles include, but are not limited to, cargo tanks and
264 portable tanks as defined in 49 C. F. R. Part 171 (1998).
265 This definition does not include portable tanks having a rated
266 capacity under one thousand gallons.

267 (39) “Texting” means manually entering alphanumeric
268 text into or reading text from an electronic device.

269 (A) This action includes, but is not limited to, short
270 messaging service, e-mailing, instant messaging and a
271 command or request to access a World Wide Web page or
272 engaging in any other form of electronic text retrieval or
273 entry for present or future communication.

274 (B) Texting does not include:

275 (i) Reading, selecting or entering a telephone number, an
276 extension number or voicemail retrieval codes and
277 commands into an electronic device for the purpose of
278 initiating or receiving a phone call or using voice commands
279 to initiate or receive a telephone call;

280 (ii) Inputting, selecting or reading information on a global
281 positioning system or navigation system; or

282 (iii) Using a device capable of performing multiple
283 functions including, but not limited to, fleet management
284 systems, dispatching devices, smart phones, citizen band
285 radios or music players for a purpose that is not otherwise
286 prohibited by this section

287 (40) “Transportation Security Administration” means the
288 United States Department of Homeland Security
289 Transportation Security Administration.

290 (41) “United States” means the fifty states and the
291 District of Columbia.

292 (42) “Valid or Certified Medical Certification Status”
293 means that an applicant or driver has a current medical
294 evaluation or determination by a licensed physician that the
295 applicant or driver meets the minimum federal motor carrier
296 safety administration physical qualifications within the
297 prescribed time frames pursuant 49 CFR Part §391. Not-
298 certified means that an applicant or driver does not have a
299 current medical evaluation or has not been certified by a
300 licensed physician as meeting the minimum federal motor
301 carrier safety administration physical qualifications pursuant
302 49 CFR Part §391.

303 (43) “Vehicle Group” means a class or type of vehicle
304 with certain operating characteristics.

§17E-1-6. Employer responsibilities.

1 (a) Each employer shall require the applicant to provide
2 the information specified in section five of this article.

3 (b) No employer may knowingly allow, permit, require
4 or authorize a driver to drive a commercial motor vehicle
5 during any period in which the driver:

6 (1) Has a driver’s license suspended, revoked or canceled
7 by a state; has lost the privilege to drive a commercial motor
8 vehicle in a state or has been disqualified from driving a
9 commercial motor vehicle;

10 (2) Has more than one driver’s license at one time;

11 (3) The commercial motor vehicle he or she is driving or
12 the motor carrier operation is subject to an out-of-service
13 order;

14 (4) Is in violation of federal, state or local law or
15 regulation pertaining to railroad highway grade crossings; or

16 (5) Is in violation of any provision of 49 C.F.R., Part §
17 382 related to controlled substances and alcohol use and
18 testing.

19 (c) No employer may require or allow a driver to operate
20 a commercial motor vehicle while texting.

21 (d) The division shall impose a civil penalty in addition
22 to any penalty required under the provisions of section
23 twenty-five of this article on any employer who knowingly
24 allows, permits, requires or authorizes a driver to drive a
25 commercial motor vehicle in violation of subdivision (3) or
26 (4) of subsection (b) or subsection (c) of this section.

27 (1) If the conviction is for a violation of subdivision (3),
28 of subsection (b) of this section, the penalty is \$2,750.

29 (2) If the conviction is for a violation of subdivision (4),
30 of subsection (b) or (c) of this section, the penalty shall be no
31 more than \$25,000.

§17E-1-9. Commercial driver's license qualification standards.

1 (a) No person may be issued a commercial driver's
2 license unless that person is a resident of this state and has
3 passed a knowledge and skills test for driving a commercial
4 motor vehicle which complies with minimum federal
5 standards established by federal regulations enumerated in 49
6 C.F.R. Part § 383, Subparts G and H (2004) and has satisfied
7 all other requirements of the Federal Motor Carrier Safety

8 Improvement Act of 1999 in addition to other requirements
9 imposed by state law or federal regulations.

10 (b) Third party testing. The commissioner may authorize
11 a person, including an agency of this or another state, an
12 employer, private individual or institution, department,
13 agency or instrumentality of local government, to administer
14 the skills test specified by this section so long as:

15 (1) The test is the same which would otherwise be
16 administered by the state; and

17 (2) The party has entered into an agreement with the state
18 that complies with the requirements of 49 C.F.R., part §
19 383.75.

20 (c) Indemnification of driver examiners. No person who
21 has been officially trained and certified by the state as a
22 driver examiner, who administers a driving test, and no other
23 person, firm or corporation by whom or with which that
24 person is employed or is in any way associated, may be
25 criminally liable for the administration of the tests or civilly
26 liable in damages to the person tested or other persons or
27 property unless for gross negligence or willful or wanton
28 injury.

29 (d) The commissioner may waive the skills test specified
30 in this section for a commercial driver license applicant who
31 meets the requirements of 49 C.F.R. part § 383.77 and the
32 requirements specified by the commissioner.

33 (e) A commercial driver's license or commercial driver's
34 instruction permit may not be issued to a person while the
35 person is subject to a disqualification from driving a
36 commercial motor vehicle, when the person does not possess
37 a valid or current medical certification status or while the
38 person's driver's license is suspended, revoked or canceled

39 in any state. A commercial driver's license may not be
40 issued by any other state unless the person first surrenders all
41 such licenses to the division.

42 (f) Commercial driver's instruction permit may be issued
43 as follows:

44 (1) To an individual who holds a valid Class E or Class
45 D driver's license and has passed the vision and written tests
46 required for issuance of a commercial driver's license.

47 (2) The commercial instruction permit may not be issued
48 for a period to exceed six months. Only one renewal or
49 reissuance may be granted within a two-year period. The
50 holder of a commercial driver's instruction permit may drive
51 a commercial motor vehicle on a highway only when
52 accompanied by the holder of a commercial driver's license
53 valid for the type of vehicle driven, who is twenty-one years
54 of age or older, who is alert and unimpaired and who
55 occupies a seat beside the individual for the purpose of giving
56 instruction or testing.

57 (3) Only to a person who is at least eighteen years of age
58 and has held a graduated Class E, Class E or Class D license
59 for at least two years.

60 (4) The applicant for a commercial driver's instruction
61 permit shall also be otherwise qualified to hold a commercial
62 driver's license.

§17E-1-10. Application for commercial driver's license.

1 (a) The application for a commercial driver's license or
2 commercial driver's instruction permit must include at least
3 the following:

4 (1) The full name and current mailing and residential
5 address of the person;

6 (2) A physical description of the person including sex,
7 height, weight and eye color;

8 (3) Date of birth;

9 (4) The applicant's social security number;

10 (5) The person's signature;

11 (6) The person's color photograph;

12 (7) Certifications including those required by 49 C.F.R.
13 Part § 383.71(a)(2004);

14 (8) Any other information required by the commissioner;

15 (9) A consent to release driving record information; and

16 (10) Certification stating that the applicant is:

17 (A) Engaged in interstate commerce and subject to 49
18 C.F.R. Part §391 standards;

19 (B) Engaged in interstate commerce but excepted from 49
20 C.F.R. Part §391 standards;

21 (C) Engaged in intrastate commerce and subject to state
22 medical standards; or

23 (D) Engaged in intrastate commerce but not subject to
24 state medical standards.

25 (b) When a licensee changes his or her name, mailing
26 address or residence, or when a licensee's classifications,
27 endorsements, or restrictions or medical certification status
28 changes; the licensee shall submit an application for a
29 duplicate license and obtain a duplicate driver's license
30 displaying the updated information.

31 (c) No person who has been a resident of this state for
32 thirty days or more may drive a commercial motor vehicle
33 under the authority of a commercial driver's license issued by
34 another jurisdiction.

§17E-1-11. Commercial driver's license.

1 The commercial driver's license shall be marked
2 "commercial driver's license" or "CDL" and, to the
3 maximum extent practicable, tamper proof. It must include,
4 but not be limited to, the following information:

5 (a) The name and residential address of the person;

6 (b) The person's color photograph;

7 (c) A physical description of the person including sex,
8 height, weight, and eye color;

9 (d) Date of birth;

10 (e) The person's signature;

11 (f) The class or type of commercial motor vehicle or
12 vehicles which the person is authorized to drive together with
13 any endorsement(s) and or restriction(s);

14 (g) The name of this state;

15 (h) The dates between which the license is valid; and

16 (i) Any information required by the Federal Motor
17 Carrier Safety Administration concerning the driver's valid
18 or current medical certification status.

§17E-1-12. Classifications, endorsements and restrictions.

1 (a) Commercial driver's licenses may be issued with the
2 following classifications:

3 (1) *Class A combination vehicle.* -- Any combination of
4 vehicles with a gross combined vehicle weight rating of
5 twenty-six thousand one pounds or more, provided the gross
6 vehicle weight rating of the vehicle being towed is in excess
7 of ten thousand pounds.

8 (2) *Class B heavy straight vehicle.* -- Any single vehicle
9 with a gross vehicle weight rating of twenty-six thousand one
10 pounds or more and any vehicle towing a vehicle not in
11 excess of ten thousand pounds.

12 (3) *Class C small vehicle.* -- Any single vehicle or
13 combination vehicle that does not fall under either Class A or
14 Class B but are:

15 (A) Vehicles designed to transport sixteen or more
16 passengers, including the driver; and

17 (B) Vehicles used in the transportation of hazardous
18 materials which requires the vehicle to be placarded under 49
19 C.F.R. Part §172, Subpart F (2004).

20 (4) Each applicant who desires to operate a vehicle in a
21 classification different from the class in which the applicant
22 is authorized is required to retake and pass all related tests
23 except the following:

24 (A) A driver who has passed the knowledge and skills test
25 for a combination vehicle in Class A may operate a heavy
26 straight vehicle in Class B or a small vehicle in Class C
27 provided he or she possesses the required endorsements; and

28 (B) A driver who has passed the knowledge and skills
29 test for a vehicle in Class B may operate any small vehicle in

30 Class C provided he or she possesses the required
31 endorsements.

32 (b) *Endorsements and restrictions.* -- The commissioner
33 upon issuing a commercial driver's license may impose
34 endorsements and restrictions determined by the
35 commissioner to be appropriate to assure the safe operation
36 of a specific class, type or category of motor vehicle or a
37 specifically equipped motor vehicle and to comply with 49
38 U.S.C., et seq., and 49 C.F.R. §383.93 (2004) including, but
39 not limited to, endorsements or restrictions to operate:

40 (1) Double or triple trailers which requires successful
41 completion of a knowledge test;

42 (2) Passenger vehicles which requires successful
43 completion of a knowledge and skills test;

44 (3) Tank vehicles which requires successful completion
45 of a knowledge test;

46 (4) Vehicles used for the transportation of hazardous
47 materials as defined in section three of this article which
48 requires the completion of a knowledge test and a
49 background security risk check in accordance with 49 C.F.R.
50 §1572.5(2004);

51 (5) School buses which requires successful completion of
52 a knowledge and skills test unless the applicant meets the
53 criteria for waiver of the skills test in accordance with 49
54 C.F.R. §383.123(b)(2004); or

55 (6) Vehicles equipped with air brakes which requires the
56 completion of a skills test.

57 (c) *Applicant record check.* -- Before issuing a
58 commercial driver's license, the commissioner shall obtain

59 driving record and medical certification status information
60 through the commercial driver's license information system,
61 the national driver register and from each state in which the
62 person has been licensed.

63 (d) *Notification of license issuance.* -- Within ten days
64 after issuing a commercial driver's license, the commissioner
65 shall notify the commercial driver's license information
66 system of the issuance and provide all information required
67 to ensure identification of the person.

68 (e) *Expiration of license.* --

69 (1) Every commercial driver's license issued to persons
70 who have attained their twenty-first birthday expires on the
71 applicant's birthday in those years in which the applicant's
72 age is evenly divisible by five. Except as provided in
73 subdivision (2) of this subsection, no commercial driver's
74 license may be issued for less than three years nor more than
75 seven years. The commercial driver's license shall be
76 renewed by the applicant's birthday and is valid for a period
77 of five years, expiring on the applicant's birthday and in a
78 year in which the applicant's age is evenly divisible by five.
79 No commercial driver's license with a hazardous materials
80 endorsement may be issued for more than five years.

81 (2) Every commercial driver's license issued to persons
82 who have not attained their twenty-first birthday expires
83 thirty days after the applicant's birthday in the year in which
84 the applicant attains the age of twenty-one years.

85 (3) Commercial driver's licenses held by any person in
86 the Armed Forces which expire while that person is on active
87 duty remains valid for thirty days from the date on which that
88 person reestablishes residence in West Virginia.

89 (4) Any person applying to renew a commercial driver's
90 license which has been expired for six months or more shall

91 follow the procedures for an initial issuance of a commercial
92 driver's license, including the testing provisions.

93 (5) Any commercial driver's license held by a person
94 who does not possess a valid or current medical certification
95 status is no longer valid for the operation of a commercial
96 motor vehicle and is downgraded to the appropriate licensure
97 level commensurate with the licensee's qualifications
98 regardless of the expiration date or indicated class on the face
99 of the license within the time frames prescribed by 49 CFR
100 §383.73(j).

101 (f) When applying for renewal of a commercial driver's
102 license, the applicant shall complete the application form and
103 provide updated information and required certifications.

104 (g) If the applicant wishes to obtain or retain a hazardous
105 materials endorsement, the applicant shall comply with a
106 background check in accordance with 49 U.S.C. §5103a and
107 49 C.F.R. Part §1572 (2004) and subject to the following:

108 (1) The applicant is a citizen of the United States or a
109 lawful permanent resident of the United States;

110 (2) The applicant completes the application prescribed by
111 the division and submits fingerprints in a form and manner
112 prescribed by the division and the United States Department
113 of Homeland Security Transportation Security
114 Administration at the time of application or at any other time
115 in accordance with 49 C.F.R. §1572.5(2004);

116 (3) The applicant pays all fees prescribed by the
117 Transportation Security Administration or its agent and the
118 division;

119 (4) The applicant has not been adjudicated as a mental
120 defective or committed to a mental institution as prescribed
121 in 49 C.F.R. §1572.109(2004);

122 (5) The applicant has not committed a disqualifying
123 criminal offense as described in 49 C.F.R. §1572.103(2004);

124 (6) The applicant has passed the Transportation Security
125 Administration security threat assessment and the division
126 has received a final notification of threat assessment or
127 notification of no security threat from the Transportation
128 Security Administration. An appeal of a decision,
129 determination or ruling of the Federal Bureau of Investigation
130 or the Transportation Security Agency shall be directed to
131 that agency; and

132 (7) The applicant has successfully passed the written test
133 for the issuance or renewal of a hazardous material
134 endorsement.

§17E-1-13. Disqualification.

1 (a) A person may not operate a commercial motor vehicle
2 if his or her privilege to operate a commercial motor vehicle
3 is disqualified under the provisions of the Federal Motor
4 Carrier Safety Improvement Act of 1999, 49 C.F.R. Part
5 §383, Subpart D (2004) or in accordance with the provisions
6 of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each
9 conviction resulting from a separate incident includes
10 convictions for offenses committed in a commercial motor
11 vehicle or a noncommercial motor vehicle.

12 (2) Any person disqualified from operating a commercial
13 motor vehicle for life under the provisions of this chapter for
14 offenses described in subsection (b), subdivisions (4) and (6)
15 of this section is eligible for reinstatement of privileges to
16 operate a commercial motor vehicle after ten years and after
17 completion of the Safety and Treatment Program or other
18 appropriate program prescribed by the division. Any person

19 whose lifetime disqualification has been amended under the
20 provisions of this subdivision and who is subsequently
21 convicted of a disqualifying offense described in subsection
22 (b), subdivisions (1) through (8) of this section, is not eligible
23 for reinstatement.

24 (3) Any disqualification imposed by this section is in
25 addition to any action to suspend, revoke or cancel the
26 driver's license or driving privileges if suspension,
27 revocation or cancellation is required under another provision
28 of this code.

29 (4) The provisions of this section apply to any person
30 operating a commercial motor vehicle and to any person
31 holding a commercial driver's license.

32 (b) Any person is disqualified from driving a commercial
33 motor vehicle for the following offenses and time periods if
34 convicted of:

35 (1) Driving a motor vehicle under the influence of
36 alcohol or a controlled substance;

37 (A) For a first conviction or for refusal to submit to any
38 designated secondary chemical test while operating a
39 commercial motor vehicle, a driver is disqualified from
40 operating a commercial motor vehicle for a period of one
41 year.

42 (B) For a first conviction or for refusal to submit to any
43 designated secondary chemical test while operating a
44 noncommercial motor vehicle, a commercial driver's license
45 holder is disqualified from operating a commercial motor
46 vehicle for a period of one year.

47 (C) For a first conviction or for refusal to submit to any
48 designated secondary chemical test while operating a
49 commercial motor vehicle transporting hazardous materials

50 required to be placarded under 49 C.F.R. Part §172, Subpart
51 F, a driver is disqualified from operating a commercial motor
52 vehicle for a period of three years.

53 (D) For a second conviction or for refusal to submit to
54 any designated secondary chemical test in a separate incident
55 of any combination of offenses in this subsection while
56 operating a commercial motor vehicle, a driver is disqualified
57 from operating a commercial motor vehicle for life.

58 (E) For a second conviction or refusal to submit to any
59 designated secondary chemical test in a separate incident of
60 any combination of offenses in this subsection while
61 operating a noncommercial motor vehicle, a commercial
62 motor vehicle license holder is disqualified from operating a
63 commercial motor vehicle for life.

64 (2) Driving a commercial motor vehicle while the
65 person's alcohol concentration of the person's blood, breath
66 or urine is four hundredths of one percent or more, by
67 weight;

68 (A) For a first conviction or for refusal to submit to any
69 designated secondary chemical test while operating a
70 commercial motor vehicle, a driver is disqualified from
71 operating a commercial motor vehicle for one year.

72 (B) For a first conviction or for refusal to submit to any
73 designated secondary chemical test while operating a
74 commercial motor vehicle transporting hazardous materials
75 required to be placarded under 49 C.F.R. Part §172, Subpart
76 F, a driver is disqualified from operating a commercial motor
77 vehicle for three years.

78 (C) For a second conviction or refusal to submit to any
79 designated secondary chemical test in a separate incident of
80 any combination of offenses in this subsection while

81 operating a commercial motor vehicle, a driver is disqualified
82 from operating a commercial motor vehicle for life.

83 (3) Refusing to submit to any designated secondary
84 chemical test required by the provisions of this code or the
85 provisions of 49 C.F.R. §383.72 (2004);

86 (A) For the first conviction or refusal to submit to any
87 designated secondary chemical test while operating a
88 commercial motor vehicle, a driver is disqualified from
89 operating a commercial motor vehicle for one year.

90 (B) For the first conviction or refusal to submit to any
91 designated secondary chemical test while operating a
92 noncommercial motor vehicle, a commercial driver's license
93 holder is disqualified from operating a commercial motor
94 vehicle for one year.

95 (C) For the first conviction or for refusal to submit to any
96 designated secondary chemical test while operating a
97 commercial motor vehicle transporting hazardous materials
98 required to be placarded under 49 C.F.R. Part §172, Subpart
99 F (2004), a driver is disqualified from operating a
100 commercial motor vehicle for a period of three years.

101 (D) For a second conviction or refusal to submit to any
102 designated secondary chemical test in a separate incident of
103 any combination of offenses in this subsection while
104 operating a commercial motor vehicle, a driver is disqualified
105 from operating a commercial motor vehicle for life.

106 (E) For a second conviction or refusal to submit to any
107 designated secondary chemical test in a separate incident of
108 any combination of offenses in this subsection while
109 operating a noncommercial motor vehicle, a commercial
110 driver's license holder is disqualified from operating a
111 commercial motor vehicle for life.

112 (4) Leaving the scene of an accident;

113 (A) For the first conviction while operating a commercial
114 motor vehicle, a driver is disqualified from operating a
115 commercial motor vehicle for one year.

116 (B) For the first conviction while operating a
117 noncommercial motor vehicle, a commercial driver's license
118 holder is disqualified for one year.

119 (C) For the first conviction while operating a commercial
120 motor vehicle transporting hazardous materials required to be
121 placarded under 49 C.F.R. Part §172, Subpart F (2004), a
122 driver is disqualified from operating a commercial motor
123 vehicle for a period of three years.

124 (D) For a second conviction in a separate incident of any
125 combination of offenses in this subsection while operating a
126 commercial motor vehicle, a driver is disqualified from
127 operating a commercial motor vehicle for life.

128 (E) For a second conviction in a separate incident of any
129 combination of offenses in this subsection while operating a
130 noncommercial motor vehicle, a commercial driver's license
131 holder is disqualified from operating a commercial motor
132 vehicle for life.

133 (5) Using a motor vehicle in the commission of any
134 felony as defined in section three, article one of this chapter
135 except that the commission of any felony involving the
136 manufacture, distribution or dispensing of a controlled
137 substance or possession with intent to manufacture, distribute
138 or dispense a controlled substance falls under the provisions
139 of subdivision eight of this subsection;

140 (A) For the first conviction while operating a commercial
141 motor vehicle, a driver is disqualified from operating a
142 commercial motor vehicle for one year.

143 (B) For the first conviction while operating a
144 noncommercial motor vehicle, a commercial driver's license
145 holder is disqualified from operating a commercial motor
146 vehicle for one year.

147 (C) For the first conviction while operating a commercial
148 motor vehicle transporting hazardous materials required to be
149 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a
150 driver is disqualified from operating a commercial motor
151 vehicle for a period of three years.

152 (D) For a second conviction in a separate incident of any
153 combination of offenses in this subsection while operating a
154 commercial motor vehicle, a driver is disqualified from
155 operating a commercial motor vehicle for life.

156 (E) For a second conviction in a separate incident of any
157 combination of offenses in this subsection while operating a
158 noncommercial motor vehicle, a commercial motor vehicle
159 license holder is disqualified from operating a commercial
160 motor vehicle for life.

161 (6) Operating a commercial motor vehicle when, as a
162 result of prior violations committed operating a commercial
163 motor vehicle, the driver's privilege to operate a motor
164 vehicle has been suspended, revoked or canceled or the
165 driver's privilege to operate a commercial motor vehicle has
166 been disqualified.

167 (A) For the first conviction while operating a commercial
168 motor vehicle, a driver is disqualified from operating a
169 commercial motor vehicle for one year.

170 (B) For the first conviction while operating a commercial
171 motor vehicle transporting hazardous materials required to be
172 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a
173 driver is disqualified from operating a commercial motor
174 vehicle for a period of three years.

175 (C) For a second conviction in a separate incident of any
176 combination of offenses in this subsection while operating a
177 commercial motor vehicle, a driver is disqualified from
178 operating a commercial motor vehicle for life.

179 (7) Causing a fatality through the negligent operation of
180 a commercial motor vehicle, including, but not limited to, the
181 crimes of motor vehicle manslaughter, homicide and
182 negligent homicide as defined in section five, article three,
183 chapter seventeen-b, and section one, article five, chapter
184 seventeen-c of this code;

185 (A) For the first conviction while operating a commercial
186 motor vehicle, a driver is disqualified from operating a
187 commercial motor vehicle for one year.

188 (B) For the first conviction while operating a commercial
189 motor vehicle transporting hazardous materials required to be
190 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a
191 driver is disqualified from operating a commercial motor
192 vehicle for a period of three years.

193 (C) For a second conviction in a separate incident of any
194 combination of offenses in this subsection while operating a
195 commercial motor vehicle, a driver is disqualified from
196 operating a commercial motor vehicle for life.

197 (8) Using a motor vehicle in the commission of any
198 felony involving the manufacture, distribution or dispensing
199 of a controlled substance or possession with intent to
200 manufacture, distribute or dispense a controlled substance, a
201 driver is disqualified from operating a commercial motor
202 vehicle for life and is not eligible for reinstatement.

203 (c) Any person is disqualified from driving a commercial
204 motor vehicle if convicted of;

205 (1) Speeding excessively involving any speed of fifteen
206 miles per hour or more above the posted speed limit;

207 (A) For a second conviction of any combination of
208 offenses in this subsection in a separate incident within a
209 three year period while operating a commercial motor
210 vehicle, a driver is disqualified from operating a commercial
211 motor vehicle for a period of sixty days.

212 (B) For a second conviction of any combination of
213 offenses in this section in a separate incident within a three-
214 year period while operating a noncommercial motor vehicle,
215 if the conviction results in the suspension, revocation or
216 cancellation of the commercial driver's license holder's
217 privilege to operate any motor vehicle, a commercial driver's
218 license holder is disqualified from operating a commercial
219 motor vehicle for a period of sixty days.

220 (C) For a third or subsequent conviction of any
221 combination of the offenses in this subsection in a separate
222 incident in a three- year period while operating a commercial
223 motor vehicle, a driver is disqualified from operating a
224 commercial motor vehicle for a period of one hundred twenty
225 days.

226 (D) For a third or subsequent conviction of any
227 combination of offenses in this subsection in a separate
228 incident within a three- year period while operating a
229 noncommercial motor vehicle, if the conviction results in the
230 suspension, revocation or cancellation of the commercial
231 driver's license holder's privilege to operate any motor
232 vehicle, a commercial driver's license holder shall be
233 disqualified from operating a commercial motor vehicle for
234 a period of one hundred twenty days.

235 (2) Reckless driving as defined in section three, article
236 five, chapter seventeen-c of this code, careless, or negligent

237 driving including, but not limited to, the offenses of driving
238 a motor vehicle in willful or wanton disregard for the safety
239 of persons or property;

240 (A) For a second conviction of any combination of
241 offenses in this subsection in a separate incident within a
242 three-year period while operating a commercial motor
243 vehicle, a driver is disqualified from operating a commercial
244 motor vehicle for a period of sixty days.

245 (B) For a second conviction of any combination of
246 offenses in this section in a separate incident within a three-
247 year period while operating a noncommercial motor vehicle,
248 if the conviction results in the suspension, revocation or
249 cancellation of the commercial driver's license holder's
250 privilege to operate any motor vehicle, a commercial driver's
251 license holder is disqualified from operating a commercial
252 motor vehicle for a period of sixty days.

253 (C) For a third or subsequent conviction of any
254 combination of the offenses in this subsection in a separate
255 incident in a three- year period while operating a commercial
256 motor vehicle, a driver is disqualified from operating a
257 commercial motor vehicle for a period of one hundred twenty
258 days.

259 (D) For a third or subsequent conviction of any
260 combination of offenses in this subsection in a separate
261 incident within a three- year period while operating a
262 noncommercial motor vehicle, if the conviction results in the
263 suspension, revocation or cancellation of the commercial
264 driver's license holder's privilege to operate any motor
265 vehicle, a commercial driver's license holder is disqualified
266 from operating a commercial motor vehicle for a period of
267 one hundred twenty days.

268 (3) Making improper or erratic traffic lane changes;

269 (A) For a second conviction of any combination of
270 offenses in this subsection in a separate incident within a
271 three-year period while operating a commercial motor
272 vehicle, a driver is disqualified from operating a commercial
273 motor vehicle for a period of sixty days.

274 (B) For a second conviction of any combination of
275 offenses in this section in a separate incident within a three-
276 year period while operating a noncommercial motor vehicle,
277 if the conviction results in the suspension, revocation, or
278 cancellation of the commercial driver's license holder's
279 privilege to operate any motor vehicle, a commercial driver's
280 license holder is disqualified from operating a commercial
281 motor vehicle for a period of sixty days.

282 (C) For a third or subsequent conviction of any
283 combination of the offenses in this subsection in a separate
284 incident in a three- year period while operating a commercial
285 motor vehicle, a driver is disqualified from operating a
286 commercial motor vehicle for a period of one hundred twenty
287 days.

288 (D) For a third or subsequent conviction of any
289 combination of offenses in this subsection in a separate
290 incident within a three-year period while operating a
291 noncommercial motor vehicle, if the conviction results in the
292 suspension, revocation or cancellation of the commercial
293 driver's license holder's privilege to operate any motor
294 vehicle, a commercial driver's license holder is disqualified
295 from operating a commercial motor vehicle for a period of
296 one hundred twenty days.

297 (4) Following the vehicle ahead too closely;

298 (A) For a second conviction of any combination of
299 offenses in this subsection in a separate incident within a
300 three-year period while operating a commercial motor

301 vehicle, a driver is disqualified from operating a commercial
302 motor vehicle for a period of sixty days.

303 (B) For a second conviction of any combination of
304 offenses in this section in a separate incident within a three-
305 year period while operating a noncommercial motor vehicle,
306 if the conviction results in the suspension, revocation, or
307 cancellation of the commercial driver's license holder's
308 privilege to operate any motor vehicle, a commercial driver's
309 license holder is disqualified from operating a commercial
310 motor vehicle for a period of sixty days.

311 (C) For a third or subsequent conviction of any
312 combination of the offenses in this subsection in a separate
313 incident in a three- year period while operating a commercial
314 motor vehicle, a driver is disqualified from operating a
315 commercial motor vehicle for a period of one hundred twenty
316 days.

317 (D) For a third or subsequent conviction of any
318 combination of offenses in this subsection in a separate
319 incident within a three- year period while operating a
320 noncommercial motor vehicle, if the conviction results in the
321 suspension, revocation or cancellation of the commercial
322 driver's license holder's privilege to operate any motor
323 vehicle, a commercial driver's license holder is disqualified
324 from operating a commercial motor vehicle for a period of
325 one hundred twenty days.

326 (5) Violating any law relating to traffic control arising in
327 connection with a fatal accident, other than a parking
328 violation;

329 (A) For a second conviction of any combination of
330 offenses in this subsection in a separate incident within a
331 three-year period while operating a commercial motor
332 vehicle, a driver is disqualified from operating a commercial
333 motor vehicle for a period of sixty days.

334 (B) For a second conviction of any combination of
335 offenses in this section in a separate incident within a three-
336 year period while operating a noncommercial motor vehicle,
337 if the conviction results in the suspension, revocation, or
338 cancellation of the commercial driver's license holder's
339 privilege to operate any motor vehicle, a commercial driver's
340 license holder is disqualified from operating a commercial
341 motor vehicle for a period of sixty days.

342 (C) For a third or subsequent conviction of any
343 combination of the offenses in this subsection in a separate
344 incident in a three- year period while operating a commercial
345 motor vehicle, a driver is disqualified from operating a
346 commercial motor vehicle for a period of one hundred twenty
347 days.

348 (D) For a third or subsequent conviction of any
349 combination of offenses in this subsection in a separate
350 incident within a three- year period while operating a
351 noncommercial motor vehicle, if the conviction results in the
352 suspension, revocation or cancellation of the commercial
353 driver's license holder's privilege to operate any motor
354 vehicle, a commercial motor vehicle license holder
355 is disqualified from operating a commercial motor vehicle for
356 a period of one hundred twenty days.

357 (6) Driving a commercial motor vehicle without
358 obtaining a commercial driver's license;

359 (A) For a second conviction of any combination of
360 offenses in this subsection in a separate incident within a
361 three-year period while operating a commercial motor
362 vehicle, a driver is disqualified from operating a commercial
363 motor vehicle for a period of sixty days.

364 (B) For a third or subsequent conviction of any
365 combination of the offenses in this subsection in a separate
366 incident in a three-year period while operating a commercial

367 motor vehicle, a driver is disqualified from operating a
368 commercial motor vehicle for a period of one hundred twenty
369 days.

370 (7) Driving a commercial motor vehicle without a
371 commercial driver's license in the driver's possession except
372 that any person who provides proof of possession of a
373 commercial driver's license to the enforcement agency that
374 issued the citation by the court appearance or fine payment
375 deadline is not guilty of this offense;

376 (A) For a second conviction of any combination of
377 offenses in this subsection in a separate incident within a
378 three-year period while operating a commercial motor
379 vehicle, a commercial driver's license holder is disqualified
380 from operating a commercial motor vehicle for a period of
381 sixty days.

382 (B) For a third or subsequent conviction of any
383 combination of the offenses in this subsection in a separate
384 incident in a three- year period while operating a commercial
385 motor vehicle, a commercial driver's license holder
386 is disqualified from operating a commercial motor vehicle for
387 a period of one hundred twenty days.

388 (8) Driving a commercial motor vehicle without the
389 proper class of commercial driver's license or the proper
390 endorsements for the specific vehicle group being operated
391 or for the passengers or type of cargo being transported;

392 (A) For a second conviction of any combination of
393 offenses in this subsection in a separate incident within a
394 three-year period while operating a commercial motor
395 vehicle, a commercial driver's license holder is disqualified
396 from operating a commercial motor vehicle for a period of
397 sixty days.

398 (B) For a third or subsequent conviction of any
399 combination of the offenses in this subsection in a separate
400 incident in a three- year period while operating a commercial
401 motor vehicle, a commercial driver's license holder
402 is disqualified from operating a commercial motor vehicle for
403 a period of one hundred twenty days.

404 (9) Driving a commercial motor vehicle while engaged in
405 texting and convicted pursuant to section fourteen-a of this
406 article or similar law of this or any other jurisdiction or 49
407 CFR §392.80;

408 (A) For a second conviction of any combination of
409 offenses in this subsection in a separate incident within a
410 three-year period while operating a commercial motor
411 vehicle, a commercial driver's license holder is disqualified
412 from operating a commercial motor vehicle for a period of
413 sixty days.

414 (B) For a third or subsequent conviction of any
415 combination of the offenses in this subsection in a separate
416 incident in a three- year period while operating a commercial
417 motor vehicle, a commercial driver's license holder
418 is disqualified from operating a commercial motor vehicle for
419 a period of one hundred twenty days.

420 (d) Any person convicted of operating a commercial
421 motor vehicle in violation of any federal, state or local law or
422 ordinance pertaining to railroad crossing violations described
423 in subdivisions (1) through (6) of this subsection,
424 is disqualified from operating a commercial motor vehicle for
425 the period of time specified;

426 (1) Failing to slow down and check that the tracks are
427 clear of an approaching train, if not required to stop in
428 accordance with the provisions of section three, article
429 twelve, chapter seventeen-c of this code;

430 (A) For the first conviction, a driver is disqualified from
431 operating a commercial motor vehicle for a period of sixty
432 days;

433 (B) For a second conviction of any combination of
434 offenses in this subsection within a three-year period, a driver
435 is disqualified from operating a commercial motor vehicle for
436 one hundred twenty days; and

437 (C) For a third or subsequent conviction of any
438 combination of offenses in this subsection within a three-year
439 period, a driver is disqualified from operating a commercial
440 motor vehicle for one year.

441 (2) Failing to stop before reaching the crossing, if the
442 tracks are not clear, if not required to stop, in accordance
443 with the provisions of section one, article twelve, chapter
444 seventeen-c of this code;

445 (A) For the first conviction, a driver is disqualified from
446 operating a commercial motor vehicle for a period of sixty
447 days;

448 (B) For a second conviction of any combination of
449 offenses in this subsection within a three-year period, a driver
450 is disqualified from operating a commercial motor vehicle for
451 one hundred twenty days; and

452 (C) For a third or subsequent conviction of any
453 combination of offenses in this subsection within a three-year
454 period, a driver is disqualified from operating a commercial
455 motor vehicle for one year.

456 (3) Failing to stop before driving onto the crossing, if
457 required to stop in accordance with the provisions of section
458 three, article twelve, chapter seventeen-c of this code;

459 (A) For the first conviction, a driver is disqualified from
460 operating a commercial motor vehicle for a period of sixty
461 days;

462 (B) For a second conviction of any combination of
463 offenses in this subsection within a three-year period, the
464 driver is disqualified from operating a commercial motor
465 vehicle for one hundred twenty days; and

466 (C) For a third or subsequent conviction of any
467 combination of offenses in this subsection within a three-year
468 period, a driver is disqualified from operating a commercial
469 motor vehicle for one year.

470 (4) Failing to have sufficient space to drive completely
471 through the crossing without stopping in accordance with the
472 provisions of section three, article twelve, chapter seventeen-
473 c of this code;

474 (A) For the first conviction, a driver is disqualified from
475 operating a commercial motor vehicle for a period of sixty
476 days;

477 (B) For a second conviction of any combination of
478 offenses in this subsection within a three-year period, a driver
479 is disqualified from operating a commercial motor vehicle for
480 one hundred twenty days; and

481 (C) For a third or subsequent conviction of any
482 combination of offenses in this subsection within a three-year
483 period, a driver is disqualified from operating a commercial
484 motor vehicle for one year.

485 (5) Failing to obey a traffic control device or the
486 directions of an enforcement official at the crossing in
487 accordance with the provisions of section one, article twelve,
488 chapter seventeen-c of this code;

510

DRIVERS LICENSES

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489 (A) For the first conviction, a driver is disqualified from
490 operating a commercial motor vehicle for a period of sixty
491 days;

492 (B) For a second conviction of any combination of
493 offenses in this subsection within a three-year period, a driver
494 is disqualified from operating a commercial motor vehicle for
495 one hundred twenty days; and

496 (C) For a third or subsequent conviction of any
497 combination of offenses in this subsection within a three-year
498 period, a driver is disqualified from operating a commercial
499 motor vehicle for one year.

500 (6) Failing to negotiate a crossing because of insufficient
501 undercarriage clearance in accordance with the provisions of
502 section three, article twelve, chapter seventeen-c of this code.

503 (A) For the first conviction, a driver is disqualified from
504 operating a commercial motor vehicle for a period of sixty
505 days;

506 (B) For a second conviction of any combination of
507 offenses in this subsection within a three-year period, a driver
508 is disqualified from operating a commercial motor vehicle for
509 one hundred twenty days; and

510 (C) For a third or subsequent conviction of any
511 combination of offenses in this subsection within a three-year
512 period, a driver is disqualified from operating a commercial
513 motor vehicle for one year.

514 (e) Any person who is convicted of violating an out-of-
515 service order while operating a commercial motor vehicle
516 is disqualified for the following periods of time:

517 (1) If convicted of violating a driver or vehicle out-of-
518 service order while transporting nonhazardous materials;

519 (A) For the first conviction of violating an out-of-service
520 order while operating a commercial motor vehicle, a driver
521 is disqualified from operating a commercial motor vehicle for
522 one hundred eighty days.

523 (B) For a second conviction in a separate incident within
524 a ten-year period for violating an out of service order while
525 operating a commercial motor vehicle, a driver is disqualified
526 from operating a commercial motor vehicle for two years.

527 (C) For a third or subsequent conviction in a separate
528 incident within a ten-year period for violating an out-of-
529 service order while operating a commercial motor vehicle, a
530 driver is disqualified from operating a commercial motor
531 vehicle for three years.

532 (2) If convicted of violating a driver or vehicle out-of-
533 service order while transporting hazardous materials required
534 to be placarded under 49 C.F.R. Part §172, Subpart F (2004)
535 or while operating a vehicle designed to transport sixteen or
536 more passengers including the driver;

537 (A) For the first conviction of violating an out of service
538 order while operating a commercial motor vehicle, a driver
539 is disqualified from operating a commercial motor vehicle for
540 one hundred eighty days.

541 (B) For a second conviction in a separate incident within
542 a ten-year period for violating an out-of-service order while
543 operating a commercial motor vehicle, a driver is disqualified
544 from operating a commercial motor vehicle for three years.

545 (C) For a third or subsequent conviction in a separate
546 incident within a ten-year period for violating an out-of-
547 service order while operating a commercial motor vehicle, a
548 driver is disqualified from operating a commercial motor
549 vehicle for three years.

550 (f) After disqualifying, suspending, revoking or canceling
551 a commercial driver's license, the division shall update its
552 records to reflect that action within ten days.

553 (g) In accordance with the provisions of 49 U.S.C.
554 §313119(a)(19)(2004), and 49 C.F.R. §384.226 (2004),
555 notwithstanding the provisions of section twenty-five, article
556 eleven, chapter sixty-one of this code, no record of
557 conviction, revocation, suspension or disqualification related
558 to any type of motor vehicle traffic control offense, other
559 than a parking violation, of a commercial driver's license
560 holder or a person operating a commercial motor vehicle may
561 be masked, expunged, deferred or be subject to any diversion
562 program.

563 (h) Notwithstanding any provision in this code to the
564 contrary, the division may not issue any temporary driving
565 permit, work-only driving permit or hardship license or
566 permit that authorizes a person to operate a commercial
567 motor vehicle when his or her privilege to operate any motor
568 vehicle has been revoked, suspended, disqualified or
569 otherwise canceled for any reason.

570 (i) In accordance with the provisions of 49 C.F.R.
571 §391.15(b), a driver is disqualified from operating a
572 commercial motor vehicle for the duration of any suspension,
573 revocation or cancellation of his or her driver's license or
574 privilege to operate a motor vehicle by this state or by any
575 other state or jurisdiction until the driver complies with the
576 terms and conditions for reinstatement set by this state or by
577 another state or jurisdiction.

578 (j) In accordance with the provisions of 49 C.F.R. 353.52
579 (2006), the division shall immediately disqualify a driver's
580 privilege to operate a commercial motor vehicle upon a
581 notice from the Assistant Administrator of the Federal Motor
582 Carrier Safety Administration that the driver poses an
583 imminent hazard. Any disqualification period imposed under

584 the provisions of this subsection shall be served concurrently
585 with any other period of disqualification if applicable.

586 (k) In accordance with the provisions of 49 C.F.R.
587 1572.11(a), the division shall immediately disqualify a
588 driver's privilege to operate a commercial motor vehicle if
589 the driver fails to surrender his or her driver's license with a
590 hazardous material endorsement to the division upon proper
591 notice by the division to the driver that the division received
592 notice from the Department of Homeland Security
593 Transportation Security Administration of an initial
594 determination of threat assessment and immediate revocation
595 that the driver does not meet the standards for security threat
596 assessment provided in 49 C.F.R. 1572.5. The
597 disqualification remains in effect until the driver either
598 surrenders the driver's license to the division or provides the
599 division with an affidavit attesting to the fact that the driver
600 has lost or is otherwise unable to surrender the license.

601 (l) In accordance with 49 C.F.R. §391.41, a driver is
602 disqualified from operating a commercial motor vehicle if the
603 driver is not physically qualified to operate a commercial
604 motor vehicle or does not possess a valid medical
605 certification status.

606 (m) In accordance with the provisions of 49 C.F.R.
607 §383.73(g), the division shall disqualify a driver's privilege
608 to operate a commercial motor vehicle if the division
609 determines that the licensee has falsified any information or
610 certifications required under the provisions of 49 C.F.R. 383
611 Subpart J or 49 C.F.R. §383.71a for sixty days in addition to
612 any other penalty prescribed by this code.

§17E-1-14a. Commercial Drivers Prohibited From Texting.

1 (a) No commercial driver may engage in texting while
2 driving a commercial motor vehicle.

3 (b) No motor carrier may allow or require its drivers to
4 engage in texting while driving a commercial motor vehicle.

5 (c) For the purposes of this section only, and unless a
6 more restrictive prohibition is prescribed in this code, driving
7 means operating a commercial motor vehicle with the motor
8 running, including while temporarily stationed because of
9 traffic, a traffic control device or other momentary delays.
10 Driving does not include operating a commercial motor
11 vehicle with or without the motor running when the driver
12 moved the vehicle to the side of or off a highway, as defined
13 in 49 CFR 390.5, and halted in a location where the vehicle
14 can safely remain stationary.

§17E-1-17. Driving record information to be furnished.

1 Subject to the provisions of article two-a, chapter
2 seventeen-a of this code, the commissioner shall furnish full
3 information regarding the driving record of any person:

4 (a) To the driver license administrator of any other state
5 of the United States and the District of Columbia or a
6 province or territory of Canada or a state or federal agency of
7 the United Mexican States requesting that information;

8 (b) To any motor carrier employer or prospective motor
9 carrier employer;

10 (c) To the United States Secretary of Transportation; and

11 (d) To the driver:

12 Nothing in this section prevents an insurer from obtaining
13 a standard driving record issued in accordance with section
14 two, article two, chapter seventeen-d of this code.

§17E-1-20. Reciprocity.

1 (a) Notwithstanding any law to the contrary, a person
2 may drive a commercial motor vehicle if the person has a

3 commercial driver's license by any state of the United States
4 and the District of Columbia or a province or territory of
5 Canada or a state or federal agency of the United Mexican
6 States in accordance with the minimum federal standards for
7 the issuance of commercial motor vehicle driver licenses if
8 the license is not suspended, revoked or canceled, if the
9 person is not disqualified from driving a commercial motor
10 vehicle or not subject to an "out-of-service" order.

11 (b) The commissioner is authorized to suspend, revoke or
12 cancel the privilege to operate a motor vehicle or disqualify
13 the privilege to operate a commercial motor vehicle of any
14 resident of this state or of a nonresident upon receiving notice
15 of the conviction of such person in another state of an offense
16 which, if committed in this state, would be grounds for the
17 suspension, revocation or cancellation of the privilege to
18 operate a motor vehicle or the disqualification of the
19 privilege to operate a commercial motor vehicle.



CHAPTER 49

**(Com. Sub. for H. B. 2709 - By Delegates
Canterbury, Hamilton, Perry,
Shaver, Walker and Hartman)**

[Passed March 1, 2011; in effect from passage.]
[Approved by the Governor on March 11, 2011.]

AN ACT to amend and reenact §18-5-9a of the Code of West Virginia, 1931, as amended, relating to lease purchase contracts for energy saving measures and energy-saving contracts entered into by county boards; and allowing these contracts to have a term of up to fifteen years.

Be it enacted by the Legislature of West Virginia:

That §18-5-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-9a. Energy-savings contracts.

1 (a) For the purposes of this section:

2 (1) “Energy-conservation measures” means goods or
3 services, or both, to reduce energy consumption operating
4 costs of school facilities. These include, but are not limited
5 to, installation of two or more of the following:

6 (A) Insulation of a building structure and systems within
7 a building;

8 (B) Storm windows or doors, caulking or weather
9 stripping, multi-glazed windows or doors, heat-absorbing or
10 heat-reflective glazed and coated window or door systems or
11 other window or door modifications that reduce energy
12 consumption;

13 (C) Automatic energy control systems;

14 (D) Heating, ventilating or air conditioning systems,
15 including modifications or replacements;

16 (E) Replacement or modification of lighting fixtures to
17 increase energy efficiency;

18 (F) Energy recovery systems;

19 (G) Co-generation systems that produce steam or another
20 form of energy for use by the county board of education in a
21 building or complex of buildings owned by the Board of
22 Education; or

23 (H) Energy-conservation maintenance measures that
24 provide long-term operating cost reductions of the building's
25 present cost of operation.

26 (2) "Energy-savings contract" means a contract for the
27 evaluation and recommendation of energy operations
28 conservation measures and for implementation of one or
29 more such measures. The contract shall provide that
30 payments, except obligations upon termination of the contract
31 before its expiration, are to be made over time. A county
32 board of education may supplement these payments with
33 federal, state or local funds to reduce the annual cost or to
34 lower the initial amount to be financed.

35 (3) "Qualified provider" means a person, firm or
36 corporation experienced in the design, implementation and
37 installation of energy-conservation measures.

38 (b) County boards of education are hereby authorized to
39 enter into performance-based contracts with qualified
40 providers of energy-conservation measures for the purpose of
41 reducing energy operating costs of school buildings.

42 (c) A board of education may enter into an energy-
43 savings contract with a qualified provider to significantly
44 reduce energy operating costs. Before entering into such a
45 contract or before the installation of equipment,
46 modifications or remodeling to be furnished under such a
47 contract, the qualified provider shall first issue a proposal
48 summarizing the scope of work to be performed. Such a
49 proposal shall contain estimates of all costs of installation,
50 modifications or remodeling including the costs of design,

51 engineering, installation, maintenance, repairs or debt service
52 as well as estimates of the amounts by which energy
53 operating costs will be reduced. If the board finds, after
54 receiving the proposal, that the proposal includes more than
55 one energy-conservation measure designed to save energy
56 operating costs, the board may enter into a contract with the
57 provider pursuant to this section.

58 (d) An energy-savings contract shall include the
59 following:

60 (1) A guarantee of a specific minimum amount of money
61 that the board will save in energy operating costs each year
62 during the term of the contract; and

63 (2) A statement of all costs of energy-conservation
64 measures including the costs of design, engineering,
65 installation, maintenance, repairs and operations.

66 (e) An energy-savings contract which is performance-
67 based and includes a guarantee of savings and a
68 comprehensive approach of energy-conservation measures
69 for improving comfort is subject to competitive bidding
70 requirements. The requirements of article five-a, chapter
71 twenty-one of this code as to prevailing wage rates shall
72 apply to the construction and installation work performed
73 under such a contract.

74 (f) A board may enter into a “lease with an option to
75 purchase” contract for the purchase and installation of
76 energy-conservation measures if the term of the lease does
77 not exceed fifteen years and the lease contract includes the
78 provisions hereinafter contained in subsection (g) and meets
79 federal tax requirements for tax-exempt municipal leasing or
80 long-term financing.

81 (g) An energy-savings contract may extend beyond the
82 fiscal year in which it first becomes effective except that
83 such a contract may not exceed a fifteen-year term and shall
84 be void unless such agreement provides the board the option
85 to terminate the agreement during each fiscal year of the
86 contract. The board may include in its annual budget for
87 each fiscal year any amounts payable under long-term
88 energy-savings contracts during that fiscal year.

89 (h) Nothing contained in this section requires or permits
90 the replacement of jobs performed by service personnel
91 employed by the local school board pursuant to sections eight
92 and eight-a, article four, chapter eighteen-a of the code, as
93 amended.

CHAPTER 50

**(S. B. 612 - By Senators Plymale, Browning,
Edgell, Laird, Stollings, Tucker and Wills)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5A-3a; and to amend and reenact §18-5B-10 of said code, all relating to exempting certain schools and school districts from certain statutory provisions pursuant to certain statutory approval and recommendation processes.

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 §18-5A-3a; and that §18-5B-10 of said code be amended and reenacted, all to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-3a. Waivers of statutes granted to public schools pursuant to recommendations submitted by local school improvement councils; limitations.

1 (a) The Legislature hereby grants a waiver from the
2 statute or statutes indicated for the following school or
3 schools pursuant to and for the purposes enumerated in the
4 written statement recommending the waiver, with supporting
5 reasons, approved by the local school improvement council
6 of the respective schools and recommended by the
7 Legislative Oversight Commission on Education
8 Accountability in accordance with the provisions of section
9 three of this article. The grant of a waiver to a statute means
10 that the school or schools granted the waiver may implement
11 the actions as specifically described in their written statement
12 notwithstanding the provisions of this code from which they
13 are specifically waived. These waivers are limited to the
14 purposes as specifically described in the statement upon
15 which the Legislative Oversight Commission on Education
16 Accountability made its recommendation for a waiver to the
17 Legislature and are expressly repealed for any modification
18 or implementation of the described actions which changes
19 those purposes. However, nothing in this section prohibits a
20 local school improvement council school that has been
21 granted a waiver from submitting a request to the Legislative
22 Oversight Commission on Education Accountability for
23 modifications, subject to approval in accordance with section
24 three of this article.

25 (b) The following waivers are granted:

26 Section two-b, article three, chapter eighteen-a of this
27 code is waived for the schools of Cabell County for the
28 purpose of implementing a comprehensive new teacher
29 induction program, which purposes are as more specifically
30 described in the schools' written statement approved by the
31 county board and submitted to the Legislative Oversight
32 Commission on Education Accountability on February 24,
33 2011.

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-10. Exceptions to statutes granted to innovation zones; limitations.

1 (a) The Legislature hereby grants an exception to the
2 statute or statutes indicated for the following schools
3 pursuant to and for the purposes enumerated in their
4 innovation zone plans approved by the state board at its
5 meeting on the date specified. The grant of an exception to
6 a statute means that the school or schools granted the
7 exception may implement the actions as specifically
8 described in their approved innovation zone plan
9 notwithstanding the provisions of this code from which they
10 are specifically excepted. These exceptions are limited to the
11 purposes as specifically described in the plan approved on the
12 date indicated and are expressly repealed for any plan
13 modification or plan implementation which changes those
14 purposes. However, nothing in this section prohibits a school
15 or schools with an approved innovation zone plan from
16 requesting plan modifications, subject to approval of the state
17 board, and if the modifications change the purposes for which
18 an exception to a statute was granted, the state board shall
19 request an exception to achieve the new purposes in the
20 manner provided in section five of this article for requesting

21 exceptions to a statute. If the approved innovation zone plan
22 of a school or schools is withdrawn by the state board, or the
23 innovation zone designation of a school or schools is revoked
24 by the state board, the exception granted to that school or
25 those schools is expressly repealed.

26 (b) The following exceptions are granted:

27 (1) Piedmont Elementary School, Kanawha County, is
28 excepted from subsection (3), section fourteen, article four,
29 chapter eighteen-a of this code for the purpose of allowing
30 specialist teachers to take their planning period before and
31 after school totaling one hour, three days per week, and from
32 section eighteen-a, article five of this chapter for the purpose
33 of permitting a number of students in music and physical
34 education classes in excess of the class size limits to provide
35 the time and structure for teams to meet in professional
36 learning communities, which purposes are as more
37 specifically described in the school's innovation zone plan
38 approved by the state board on January 13, 2010;

39 (2) Putnam County High Schools Consortium comprised
40 of Buffalo High School, Hurricane High School, Poca High
41 School, Winfield High School and Putnam Career and
42 Technical Center, Putnam County, is excepted from section
43 forty-five, article five of this chapter only to the extent
44 necessary for the purpose of establishing a structured
45 transition program for freshman only one day prior to the
46 beginning of the regular instructional term, and for the
47 purpose of permitting the creation of not more than three
48 hours each month during the school term of structured,
49 regularly scheduled time for all teachers to work in
50 professional learning communities, which purposes are as
51 more specifically described in the schools' innovation zone
52 plan approved by the state board on January 13, 2010;

53 (3) Nellis Elementary School, Boone County, is excepted
54 from subsection (a), section two, article five-a of this chapter,
55 for the purpose of expanding the membership of its local
56 school improvement council, which purpose is as more
57 specifically described in the school’s innovation zone plan
58 approved by the state board on January 13, 2010;

59 (4) Cabell County Secondary School Consortium
60 comprised of Cabell County Career Technical Center, Cabell
61 Midland High School and Huntington High School, Cabell
62 County, is excepted from sections one and one-a, article eight
63 of this chapter for the purpose of raising the compulsory
64 school attendance age to eighteen years old, and from section
65 two-b, article three, chapter eighteen-a of this code for the
66 purpose of providing a customized high quality beginning
67 teacher induction program developed at the county level,
68 which purposes are as more specifically described in the
69 schools’ innovation zone plan approved by the state board on
70 January 13, 2010; and

71 (5) Clay County Schools is excepted from section fifteen,
72 article five of this chapter for the purpose of allowing persons
73 over the age of twenty-one years to enroll without charge of
74 fees in the Clay County Schools “iREAD” program and
75 upon, successful completion, be awarded a Clay County High
76 School Diploma, which purposes are more specifically
77 described in the Clay County School’s innovation zone plan
78 approved by the state board on January 12, 2011. The grant
79 of this exception does not abrogate the authority of the state
80 board to determine the minimum standards for granting
81 diplomas pursuant to section six, article two of this chapter
82 and does not permit persons over the age of twenty-one who
83 re-enter the public schools to be included in net enrollment
84 for the purposes of funding pursuant to article nine-a of this
85 chapter, except as otherwise provided by law.

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CHAPTER 51

**(H. B. 2648 - By Delegates Iaquinta,
Anderson, M. Poling, Crosier and Fragale)**

[Passed March 8, 2011; in effect July 1, 2011.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §18-5A-5 of the Code of West Virginia, 1931, as amended, relating to increasing the faculty senate allotment for classroom teachers and librarians from \$50 to \$100, to be spent on academic materials, supplies or equipment to enhance instruction.

Be it enacted by the Legislature of West Virginia:

That §18-5A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

- 1 (a) There is established at every public school in this state
- 2 a faculty senate which is comprised of all permanent, full-
- 3 time professional educators employed at the school who shall
- 4 all be voting members. Professional educators, as used in
- 5 this section, means professional educators as defined in
- 6 chapter eighteen-a of this code. A quorum of more than one
- 7 half of the voting members of the faculty shall be present at
- 8 any meeting of the faculty senate at which official business

9 is conducted. Prior to the beginning of the instructional term
10 each year, but within the employment term, the principal
11 shall convene a meeting of the faculty senate to elect a chair,
12 vice-chair and secretary and discuss matters relevant to the
13 beginning of the school year. The vice-chair shall preside at
14 meetings when the chair is absent. Meetings of the faculty
15 senate shall be held during the times provided in accordance
16 with subdivision (12), subsection (b) of this section as
17 determined by the faculty senate. Emergency meetings may
18 be held during noninstructional time at the call of the chair or
19 a majority of the voting members by petition submitted to the
20 chair and vice-chair. An agenda of matters to be considered
21 at a scheduled meeting of the faculty senate shall be available
22 to the members at least two employment days prior to the
23 meeting. For emergency meetings the agenda shall be
24 available as soon as possible prior to the meeting. The chair
25 of the faculty senate may appoint such committees as may be
26 desirable to study and submit recommendations to the full
27 faculty senate, but the acts of the faculty senate shall be voted
28 upon by the full body.

29 (b) In addition to any other powers and duties conferred
30 by law, or authorized by policies adopted by the state or
31 county board of education or bylaws which may be adopted
32 by the faculty senate not inconsistent with law, the powers
33 and duties listed in this subsection are specifically reserved
34 for the faculty senate. The intent of these provisions is
35 neither to restrict nor to require the activities of every faculty
36 senate to the enumerated items except as otherwise stated.
37 Each faculty senate shall organize its activities as it deems
38 most effective and efficient based on school size,
39 departmental structure and other relevant factors.

40 (1) Each faculty senate shall control funds allocated to
41 the school from legislative appropriations pursuant to section
42 nine, article nine-a of this chapter. From such funds, each
43 classroom teacher and librarian shall be allotted \$100 for

44 expenditure during the instructional year for academic
45 materials, supplies or equipment which, in the judgment of
46 the teacher or librarian, will assist him or her in providing
47 instruction in his or her assigned academic subjects or shall
48 be returned to the faculty senate: *Provided*, That nothing
49 contained herein prohibits the funds from being used for
50 programs and materials that, in the opinion of the teacher,
51 enhance student behavior, increase academic achievement,
52 improve self-esteem and address the problems of students at-
53 risk. The remainder of funds shall be expended for academic
54 materials, supplies or equipment in accordance with a budget
55 approved by the faculty senate. Notwithstanding any other
56 provisions of the law to the contrary, funds not expended in
57 one school year are available for expenditure in the next
58 school year: *Provided, however*, That the amount of county
59 funds budgeted in a fiscal year may not be reduced
60 throughout the year as a result of the faculty appropriations
61 in the same fiscal year for such materials, supplies and
62 equipment. Accounts shall be maintained of the allocations
63 and expenditures of such funds for the purpose of financial
64 audit. Academic materials, supplies or equipment shall be
65 interpreted broadly, but does not include materials, supplies
66 or equipment which will be used in or connected with
67 interscholastic athletic events.

68 (2) A faculty senate may establish a process for faculty
69 members to interview new prospective professional educators
70 and paraprofessional employees at the school and submit
71 recommendations regarding employment to the principal,
72 who may also make independent recommendations, for
73 submission to the county superintendent: *Provided*, That
74 such process shall be chaired by the school principal and
75 must permit the timely employment of persons to perform
76 necessary duties.

77 (3) A faculty senate may nominate teachers for
78 recognition as outstanding teachers under state and local

79 teacher recognition programs and other personnel at the
80 school, including parents, for recognition under other
81 appropriate recognition programs and may establish such
82 programs for operation at the school.

83 (4) A faculty senate may submit recommendations to the
84 principal regarding the assignment scheduling of secretaries,
85 clerks, aides and paraprofessionals at the school.

86 (5) A faculty senate may submit recommendations to the
87 principal regarding establishment of the master curriculum
88 schedule for the next ensuing school year.

89 (6) A faculty senate may establish a process for the
90 review and comment on sabbatical leave requests submitted
91 by employees at the school pursuant to section eleven, article
92 two of this chapter.

93 (7) Each faculty senate shall elect three faculty
94 representatives to the local school improvement council
95 established pursuant to section two of this article.

96 (8) Each faculty senate may nominate a member for
97 election to the county staff development council pursuant to
98 section eight, article three, chapter eighteen-a of this code.

99 (9) Each faculty senate shall have an opportunity to make
100 recommendations on the selection of faculty to serve as
101 mentors for beginning teachers under beginning teacher
102 internship programs at the school.

103 (10) A faculty senate may solicit, accept and expend any
104 grants, gifts, bequests, donations and any other funds made
105 available to the faculty senate: *Provided*, That the faculty
106 senate shall select a member who has the duty of maintaining
107 a record of all funds received and expended by the faculty
108 senate, which record shall be kept in the school office and is
109 subject to normal auditing procedures.

110 (11) Any faculty senate may review the evaluation
111 procedure as conducted in their school to ascertain whether
112 the evaluations were conducted in accordance with the
113 written system required pursuant to section twelve, article
114 two, chapter eighteen-a of this code and the general intent of
115 this Legislature regarding meaningful performance
116 evaluations of school personnel. If a majority of members of
117 the faculty senate determine that such evaluations were not so
118 conducted, they shall submit a report in writing to the State
119 Board of Education: *Provided*, That nothing herein creates
120 any new right of access to or review of any individual's
121 evaluations.

122 (12) A local board shall provide to each faculty senate a
123 two-hour block of time for a faculty senate meeting on a day
124 scheduled for the opening of school prior to the beginning of
125 the instructional term, and a two-hour block of time on each
126 instructional support and enhancement day scheduled by the
127 board for instructional activities for students and professional
128 activities for teachers pursuant to section forty-five, article
129 five of this chapter. A faculty senate may meet for an
130 unlimited block of time per month during noninstructional
131 days to discuss and plan strategies to improve student
132 instruction and to conduct other faculty senate business. A
133 faculty senate meeting scheduled on a noninstructional day
134 shall be considered as part of the purpose for which the
135 noninstructional day is scheduled. This time may be utilized
136 and determined at the local school level and includes, but is
137 not limited to, faculty senate meetings.

138 (13) Each faculty senate shall develop a strategic plan to
139 manage the integration of special needs students into the
140 regular classroom at their respective schools and submit the
141 strategic plan to the superintendent of the county board of
142 education periodically pursuant to guidelines developed by
143 the State Department of Education. Each faculty senate shall
144 encourage the participation of local school improvement

145 councils, parents and the community at large in developing
146 the strategic plan for each school.

147 Each strategic plan developed by the faculty senate shall
148 include at least: (A) A mission statement; (B) goals; (C)
149 needs; (D) objectives and activities to implement plans
150 relating to each goal; (E) work in progress to implement the
151 strategic plan; (F) guidelines for placing additional staff into
152 integrated classrooms to meet the needs of exceptional needs
153 students without diminishing the services rendered to the
154 other students in integrated classrooms; (G) guidelines for
155 implementation of collaborative planning and instruction; and
156 (H) training for all regular classroom teachers who serve
157 students with exceptional needs in integrated classrooms.



CHAPTER 52

**(H. B. 3116 - By Delegates Shaver, M. Poling,
Perry, Pethtel, Lawrence, Ennis, Smith,
Pasdon and Moye)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18-5A-6 of the Code of West Virginia, 1931, as amended, relating to the authority of school curriculum teams and local school collaborative processes with respect to selection and use of testing and assessment instruments not required by statute or state board when certain conditions are met; providing purposes of section; clarifying duties and removing conflicting language; specific exceptions; providing discretionary use of certain assessments, instructional strategies and programs for certain teams when certain

conditions are met; vesting powers and duties of curriculum teams with certain collaborative processes if formed; and authorizing collaborative process to incorporate functions of other committees required by rule eliminate the committees at the school.

Be it enacted by the Legislature of West Virginia:

That §18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-6. Establishment of school curriculum teams; process for teacher collaboration to improve learning.

1 (a) There shall be established at each school in the state
2 a school curriculum team composed of the school principal,
3 the counselor designated to serve that school and no fewer
4 than three teachers representative of the grades taught at the
5 school and chosen by the faculty senate. In instances where
6 the counselor is assigned to an elementary school or a
7 combination elementary and middle school on less than a
8 one-half time basis, a school curriculum team established at
9 that school may meet on days when the counselor is not at the
10 school and the principal shall consult with the counselor on
11 the issues relevant to the meeting agenda.

12 (b) The purposes of this section are to implement the
13 following goals:

14 (1) Provide professional opportunities for teachers,
15 administrators and other school personnel that allow them to
16 have a direct voice in the operation of their schools and to
17 create a culture of shared decision-making focused on the
18 ultimate goal of raising student achievement;

19 (2) Encourage the use of different, high-quality models
20 of teaching, scheduling and other aspects of educational
21 delivery that meet a variety of student needs;

22 (3) Increase high-quality educational opportunities for all
23 students that close achievement gaps between high-
24 performing and low-performing groups of public school
25 students; and

26 (4) Provide public schools with increased school-level
27 freedom and flexibility to achieve these purposes when they have
28 achieved exceptional levels of results-driven accountability.

29 (c) Powers and duties of the school curriculum team. --

30 (1) Establish for use at the school the programs and
31 methods to be used to implement a curriculum based on state-
32 approved content standards that meet the needs of students at
33 the individual school.

34 (A) The curriculum shall focus on reading, composition,
35 mathematics, science and technology.

36 (B) The curriculum thus established shall be submitted to
37 the county board which may approve for implementation at the
38 school or may return to the curriculum team for reconsideration.

39 (2) Review the list of other, non-required testing and
40 assessment instruments provided by the state board through
41 the statewide assessment program as provided in section five,
42 article two-e of this chapter. The curriculum team may select
43 one or more tests or assessment instruments that are
44 applicable to the grade levels at the school for use at the
45 school to improve student learning.

46 (3) Establish for use at the school the assessments,
47 instructional strategies and programs that it determines are

48 best suited to promote student achievement and to achieve
49 content standards for courses required by the state board.
50 The curriculum team shall submit the established
51 assessments, instructional strategies and programs to the
52 county board which shall approve the recommendations for
53 implementation at the school or shall return them to the
54 curriculum team for reconsideration.

55 (d) Notwithstanding subsection (c) of this section, the
56 school curriculum team established at a school that has achieved
57 adequate yearly progress or has achieved an accreditation status
58 of distinction or exemplary in accordance with section five,
59 article two-e of this chapter, may use the assessments and
60 implement the instructional strategies and programs consistent
61 with the approved curriculum that it determines are best suited
62 to promote student achievement at the school.

63 (1) The school may not be required to assess students
64 using any specific assessment except the state summative
65 assessment known as the WESTEST2 or any successor tests,
66 the Alternative Performance Task Assessment, the Online
67 Writing Assessment, and the National Assessment of
68 Educational Progress (NAEP); and

69 (2) The school may not be required to employ any
70 specific instructional strategy or program to achieve content
71 standards for courses required by the state board, except as
72 approved by the school curriculum team.

73 (e) If a school fails to achieve adequate yearly progress
74 or if it receives any school approval level other than
75 distinction or exemplary as set forth in section five, article
76 two-e of this chapter, the curriculum team may not exercise
77 the options provided in subsections (d) and (i) of this article
78 until the school has regained one or more of these credentials.

79 (f) Nothing in this section exempts a school from
80 assessments required by statute or state board policy

81 including, but not limited to, the state summative assessment
82 known as the WESTEST2 or any successor tests, the
83 Alternative Performance Task Assessment, the Online
84 Writing Assessment, and the National Assessment of
85 Educational Progress (NAEP).

86 (g) The school curriculum team may apply for a waiver
87 for instructional resources approved and adopted pursuant to
88 article two-a of this chapter if, in the judgment of the team,
89 the instructional resources necessary for the implementation
90 of the instructional strategies and programs best suited to
91 teach the school's curriculum are not available through the
92 normal adoption process.

93 (h) The school curriculum team may apply for a grant
94 from the state board to develop and/or implement remedial
95 and accelerated programs to meet the needs of the students at
96 the individual school.

97 (i) *Process for teacher collaboration. --*

98 (1) Notwithstanding the application and approval process
99 established by article five-c of this chapter, at a school that has
100 achieved adequate yearly progress or has achieved a school
101 accreditation status of distinction or exemplary in accordance
102 with section five, article two-e of this chapter, the faculty senate,
103 with approval of the principal, may establish a process for
104 teacher collaboration to improve instruction and learning.

105 (A) The collaborative process may be established in
106 addition to, or as an alternative to, the school curriculum
107 team provided for in subsection (a) of this section.

108 (B) The mission of the collaboration process is to review
109 student academic performance based on multiple measures,
110 to identify strategies to improve student performance and
111 make recommendations for improvement to be implemented
112 subject to approval of the principal.

113 (C) The teacher collaborative includes members the faculty
114 senate determines are necessary to address the needed
115 improvements in the academic performance of students at the
116 school. If applicable, the collaborative may consist of multiple
117 subject area subcommittees which may meet independently.

118 (2) If a collaborative process is established as an
119 alternative to the school curriculum team, the teacher
120 collaborative has all the powers and duties assigned to school
121 curriculum teams.

122 (A) The collaborative process also may incorporate the
123 functions of the Strategic Planning Committee, the
124 Technology Team, and/or the School Support Team.

125 (B) When the functions of any or all of these committees
126 are incorporated into the collaborative process, the school is
127 not required to establish a separate committee for any one
128 whose functions have been assumed by the collaborative.



CHAPTER 53

**(Com. Sub. for S. B. 228 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]**

[Passed March 12, 2011; in effect from passage.]

[Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-11; and to amend and reenact §18-8-3 and §18-8-6 of said code, all relating to school attendance; creating the Local Solution Dropout Prevention and Recovery Act; providing legislative

findings and purpose; requiring the state board to propose legislative and emergency rules; defining terms; providing application process, contents, factors to be considered in evaluating the applications and standards for review for designation of schools or school districts; exempting certain persons from certification as attendance directors under specific circumstances; requiring the state board to implement a statewide electronic system through the uniform integrated regional computer information system with early warning indicators; creating special revenue fund in State Treasury entitled the Local Solution Dropout Prevention and Recovery Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-11; and that §18-8-3 and §18-8-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-11. Local Solution Dropout Prevention and Recovery Innovation Zone Act.

1 (a) *Legislative findings, intent and purpose.*

2 The Legislature finds that:

3 (1) High school graduation is an essential milestone for
4 all West Virginia students and impacts the future success of
5 the individual, community and state;

6 (2) There are significant correlations between educational
7 attainment and labor market outcomes, greater labor force
8 participation rate, increased employment rates, improved
9 health, and decreased levels of poverty and crime. The

10 negative impact on these linkages is most evident in the
11 absence of high school completion;

12 (3) Dropping out of school is a process, not an event,
13 with factors building and compounding over time;

14 (4) Students at risk of not completing high school can be
15 identified as early as sixth grade using the indicators of
16 attendance, behavior and course failures. Therefore, a
17 comprehensive graduation plan must include a
18 comprehensive systemic approach that emphasizes early
19 interventions;

20 (5) Research identifies a number of effective strategies
21 for engaging students that have the most positive impact on
22 improving high school graduation rates. Some of these
23 strategies are school-community collaboration, safe learning
24 environments, family engagement, early literacy
25 development, mentoring and tutoring services, service
26 learning opportunities, alternative and nontraditional
27 schooling, offering multiple pathways and settings for
28 attaining high school diplomas, after-school opportunities,
29 individualized instruction and career and technical education;

30 (6) Schools cannot solve the dropout problem alone.
31 Research shows when educators, parents, elected officials,
32 business leaders, faith-based leaders, human service
33 personnel, judicial personnel and civic leaders collectively
34 work together they are often able to find innovative solutions
35 to address school and community problems; and

36 (7) Increasing high school graduation rates is an
37 important factor in preparing a college and career-ready
38 citizenry. Higher education institutions, including
39 community and technical colleges, are essential partners in
40 creating local and statewide solutions.

41 (b) Therefore, the intent of the Legislature is to provide
42 a separate category of innovation zones designated “Local
43 Solution Dropout Prevention and Recovery Innovation
44 Zones” intended to achieve the following purposes:

45 (1) Provide for the establishment of Local Solution
46 Dropout Prevention and Recovery Innovation Zones to
47 increase graduation rates and reduce the number of dropouts
48 from West Virginia schools;

49 (2) Provide schools and communities with opportunities
50 for greater collaboration to plan and implement systemic
51 approaches that include evidence-based solutions for
52 increasing graduation rates and reducing the number of
53 dropouts;

54 (3) Provide a testing ground for innovative graduation
55 programs, incentives and approaches to reducing the number
56 of dropouts;

57 (4) Provide information regarding the effects of specific
58 innovations, collaborations and policies on graduation rates
59 and dropout prevention and recovery; and

60 (5) Document educational strategies that increase
61 graduation rates, prevent dropouts and enhance student
62 success.

63 (c) *Local Solution Dropout Prevention and Recovery*
64 *Innovation Zones.*

65 A school, a group of schools or a school district may be
66 designated as a Local Solution Dropout Prevention and
67 Recovery Innovation Zone in accordance with the provisions
68 of this article, subject to the provisions of this section. The
69 state board shall propose rules for legislative promulgation,
70 including an emergency rule if necessary, in accordance with

71 article three-b chapter twenty-nine of this code to implement
72 the provisions of this section. All provisions of this article
73 apply to Local Solution Dropout Prevention and Recovery
74 Innovation Zones, including but not limited to, the
75 designation, application, approval, waiver of statutes,
76 policies, rule and interpretations, employee approval,
77 employee transfers, progress reviews, reports and
78 revocations, and job postings, subject to the following:

79 (1) For purposes of this section, a “school, a group of
80 schools or a school district” means a high school, a group of
81 schools comprised of a high school and any of the elementary
82 and middle schools whose students will attend the high
83 school, or a school district whose graduation rate in the year
84 in which an application is made is less than ninety percent
85 based on the latest available school year data published by
86 the Department of Education;

87 (2) The contents of the application for designation as a
88 Local Solution Dropout Prevention and Recovery Innovation
89 Zone must include a description of the dropout prevention
90 and recovery strategies and that the school, group of schools
91 or school district plans to implement if designated as a Local
92 Solution Dropout Prevention and Recovery Innovation Zone,
93 and any other information the state board requires. The
94 application also shall include a list of all county and state
95 board rules, policies and interpretations, and all statutes, if
96 any, identified as prohibiting or constraining the
97 implementation of the plan, including an explanation of the
98 specific exceptions to the rules, policies and interpretations
99 and statutes required for plan implementation. A school, a
100 group of schools, or school district may not request an
101 exception nor may an exception be granted from any of the
102 following:

103 (i) An assessment program administered by the West
104 Virginia Department of Education;

105 (ii) Any provision of law or policy required by the No
106 Child Left Behind Act of 2001, Public Law No. 107-110 or
107 other federal law; and

108 (iii) Section seven, article two and sections seven-a,
109 seven-b, eight and eight-b, article four, chapter eighteen-a of
110 this code, except as provided in section eight of this article;

111 (3) The factors to be considered by the state board when
112 evaluating an application shall include, but are not limited to,
113 the following:

114 (A) Evidence that other individuals or entities and
115 community organizations are involved as partners to
116 collectively work with the applicant to achieve the purposes
117 as outlined in the dropout prevention and recovery plan.
118 These individuals or entities and community organizations
119 may include, but are not limited to, individuals or entities and
120 community organizations such as parents, local elected
121 officials, business leaders, faith-based leaders, human service
122 personnel, judicial personnel, civic leaders community and
123 technical colleges Higher education institutions;

124 (B) The level of commitment and support of staff,
125 parents, students, the county board of education, the local
126 school improvement council and the school's business
127 partners as determined in accordance with this article apply
128 to become a Local Solutions Dropout Prevention and
129 Recovery Innovation Zone;

130 (C) The potential for an applicant to be successful in
131 building community awareness of the high school dropout
132 problem and developing and implementing its dropout
133 prevention and recovery plan; and

134 (D) Implementation of the statewide system of easily
135 identifiable early warning indicators of students at risk of not

136 completing high school developed by the state board in
137 accordance with section six, article eight of this chapter,
138 known as The High School Graduation Improvement Act,
139 along with a plan of interventions to increase the number of
140 students earning a high school diploma;

141 (4) The rule shall provide standards for the state board to
142 review applications for designation as a Local Solutions
143 Dropout Prevention and Recovery Innovation Zones;

144 (5) The application for designation as a Local Solutions
145 Dropout Prevention and Recovery Innovation Zone under
146 this section is subject to approval in accordance with sections
147 five and six of this article. In addition to those approval
148 stages, the application, if approved by the school employees,
149 shall be presented to the local school improvement council
150 for approval prior to submission to county superintendent and
151 board. Approval by the local school improvement council is
152 obtain when at least eighty percent of the local school
153 improvement council members present and voting after a
154 quorum is established vote in favor of the application; and

155 (6) Upon approval by the state board and state
156 superintendent of the application, all exceptions to county
157 and state board rules, policies and interpretations listed
158 within the plan are granted. The applicant school, group of
159 schools or school district shall proceed to implement the plan
160 as set forth in the approved application and no further plan
161 submissions or approval are required, except that if an
162 innovation zone plan, or a part thereof, may not be
163 implemented unless an exception to a statute is granted by
164 Act of the Legislature, the state board and state
165 superintendent may approve the plan, or the part thereof, only
166 upon the condition that the Legislature acts to grant the
167 exception as provided in this article.

168 (d) *Local solutions dropout prevention and recovery fund.*

169 There is hereby created in the State Treasury a special
170 revenue fund to be known as the “Local Solutions Dropout
171 Prevention and Recovery Fund.” The fund shall consist of all
172 moneys received from whatever source to further the purpose
173 of this article. The fund shall be administered by the state
174 board solely for the purposes of this section. Any moneys
175 remaining in the fund at the close of a fiscal year shall be
176 carried forward for use in the next fiscal year. Fund balances
177 shall be invested with the state’s consolidated investment
178 fund and any and all interest earnings on these investments
179 shall be used solely for the purposes that moneys deposited
180 in the fund may be used pursuant to this section.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

1 (a) The county board of education of every county, not
2 later than August 1, of each year, shall employ the equivalent
3 of a full-time county director of school attendance if such
4 county has a net enrollment of more than four thousand
5 pupils, at least a half-time director of school attendance if
6 such county has a net enrollment equal to or less than four
7 thousand pupils and such assistant attendance directors as
8 deemed necessary. All persons to be employed as attendance
9 directors shall have the written recommendation of the
10 county superintendent.

11 (b) The county board of education may establish special
12 and professional qualifications for attendance directors and
13 assistants as are deemed expedient and proper and are
14 consistent with regulations of the state Board of Education
15 relating thereto: *Provided*, That if the position of attendance
16 director has been posted and no fully certified applicant
17 applies, the county may employ a person who holds a

18 professional administrative certificate and meets the special
19 and professional qualifications established by the county
20 board as attendance director and that person shall not be
21 required to obtain attendance director certification.

22 (c) The attendance director or assistant director shall be
23 paid a monthly salary as fixed by the county board. The
24 attendance director or assistant director shall prepare
25 attendance reports, and such other reports as the county
26 superintendent may request.

27 (d) The county board of education shall reimburse the
28 attendance directors or assistant directors for their necessary
29 traveling expenses upon presentation of a monthly, itemized,
30 sworn statement approved by the county superintendent.

§18-8-6. The High School Graduation Improvement Act.

1 (a) This section is known and may be cited as “The High
2 School Graduation Improvement Act.”

3 (b) The Legislature makes the following findings:

4 (1) West Virginia has a dire need to implement a
5 comprehensive approach to addressing the high school drop-
6 out crisis, and to develop policies and strategies that
7 successfully assist at-risk students to stay in school, earn a
8 high school diploma, and ultimately become productively
9 contributing members of society;

10 (2) The current demands for a highly skilled workforce
11 require a high school diploma at the very minimum;

12 (3) The state has several dynamic programs that are
13 capable of actively engaging students in learning, providing
14 students with a sense of relevancy in academics, and
15 motivating students to succeed in school and ultimately earn
16 a high school diploma;

17 (4) Raising the compulsory school attendance age alone
18 will neither increase the graduation rate nor decrease the
19 drop-out rate. It is imperative that the state shift the focus
20 from merely compelling students to attend school to instead
21 providing vibrant and engaging programs that allow students
22 to recognize the value of a high school diploma or workforce
23 credential and inspire students to graduate from high school,
24 especially those students who are at risk of dropping out of
25 school;

26 (5) Investing financially in this focus shift will result in
27 the need for fewer resources to be committed to enforcing
28 compulsory attendance laws and fewer incidents of disruptive
29 student behavior;

30 (6) Absenteeism is proven to be the highest predictor of
31 course failure. Truant students face low self-confidence in
32 their ability to succeed in school because their absences cause
33 them to fall behind their classmates, and the students find
34 dropping out easier than catching up;

35 (7) There is a strong relationship between truancy and
36 dropping out of high school. Frequent absences are one of
37 the most common indicators that a student is disengaging
38 from the learning process and likely to drop out of school
39 early. Intervention after fewer absences is likely to have a
40 positive impact on a student's persistence to graduation;

41 (8) Students cite many reasons for dropping out of
42 school, some of which include engaging in drug culture, lack
43 of positive influence, role model or parental involvement,
44 absence of boundaries and direction, lack of a positive home
45 environment, peer pressure, and poor community
46 expectations;

47 (9) Dropping out of school has a profound negative
48 impact on an individual's future, resulting in limited job

49 choices, substantially lower wages and less earned over a
50 life-time than high school graduates, and a greater likelihood
51 of depending on public assistance and engaging in criminal
52 activity;

53 (10) Career-technical education is a dynamic system in
54 West Virginia which offers numerous concentrations that
55 provide students with industry-recognized credentials, while
56 also preparing them for post-secondary education;

57 (11) All career-technical education students in the state
58 have an opportunity to earn free college credit through the
59 Earn a Degree-Graduate Early (EDGE) program;

60 (12) The current high school graduation rate for
61 secondary career-technical education completers is
62 significantly higher than the state graduation rate;

63 (13) Students involved in career-technical education learn
64 a marketable skill, are likely to find jobs, and become
65 prepared for post-secondary education;

66 (14) A significant number of students who could benefit
67 from participating in a career-technical program are denied
68 access due to a number of factors, such as dropping out of
69 high school prior to enrolling in career-technical education,
70 requirements that students repeat academic courses that they
71 have failed, and scheduling conflicts with the high schools;

72 (15) There has been a dramatic change over the years
73 from vocational education, which was very basic and lacked
74 high level skills, to the career-technical programs of today
75 which are computer based, require national tests and
76 certification, and often result in jobs with high salaries;

77 (16) West Virginia's employers and technical education
78 job placement rates show that the state needs graduates with

79 technical skills to compete in the current and future job
80 markets;

81 (17) The job placement rate for students graduating from
82 career-technical programs statewide is greater than ninety-
83 five percent;

84 (18) Among the reasons students cite for dropping out of
85 school are feelings of hopelessness when they have failed
86 classes and can not recover credits in order to graduate;

87 (19) The state offers full-day programs consisting of
88 credit recovery, hands on experiences in career-technical
89 programs and basic education, which are valuable resources
90 for re-engaging students who have dropped out of school, or
91 have a potential for or are at risk of dropping out;

92 (20) A student is significantly more likely to graduate
93 from high school if he or she completes four units of training
94 in technical education;

95 (21) Learning is increased and retained at a higher level
96 if the content is taught through a relevant and applied
97 experience, and students who are able to experience
98 academics through real life projects have a higher probability
99 of mastering the appropriate concepts;

100 (22) Programs such as “GED Option” and
101 “Techademics” are valuable resources for providing relevant
102 and applied experience for students;

103 (23) The Techademics programs administered by the
104 department of education has embedded math competencies in
105 career-technical program curricula whereby students
106 simultaneously earn credit for mastery of math competencies
107 and career-technical courses;

108 (24) Students would greatly benefit if West Virginia were
109 designated as a “GED Option” state. Currently a student is
110 ineligible to take the General Educational Development
111 (GED) exam if he or she is enrolled in school, which requires
112 the student to drop out of high school in order to participate
113 in a GED preparation program or take the exam, even if the
114 student desires to remain enrolled;

115 (25) A GED Option state designation by the American
116 Council on Education would allow students in this state to
117 remain enrolled in school and continue acquiring academic
118 and career-technical credits while pursuing a GED diploma.
119 The GED Option would be blended with the West Virginia
120 virtual schools or a career-technical education pathway.
121 Upon completion, rather than being a dropout, the student
122 would have a GED diploma and a certification in the chosen
123 career-technical or virtual school pathway;

124 (26) The Mountaineer Challenge Academy is a positive
125 option for students at risk of dropping out of school, as it
126 provides students with structure, stability, and a focus on
127 positive change, all in an environment where negative
128 influences and distractions can be left behind;

129 (27) Students attending the Mountaineer Challenge
130 Academy would greatly benefit if the GED Option were
131 implemented at the Academy;

132 (28) The Health Sciences and Technology Academy
133 (HSTA) program prepares rural, minority and economically
134 disadvantaged students for college and careers in the health
135 sciences, and demonstrates tremendous success in its high
136 percentage of students who graduate from high school and
137 participate in post-secondary education.

138 (29) The West Virginia GEAR UP (Gaining Early
139 Awareness and Readiness for Undergraduate Programs)

140 program is aimed at increasing the academic performance
141 and rigorous preparation of students, increasing the number
142 of high-poverty, at-risk students who are prepared to enter
143 and succeed in post-secondary education, and increasing the
144 high school graduation rate;

145 (30) The GEAR UP program successfully aids students
146 in planning, applying and paying for education and training
147 beyond high school;

148 (31) Each dropout involved in drugs or crime or
149 dependent on public assistance creates a huge fiscal burden
150 on society;

151 (32) The intense treatment and individual monitoring
152 provided through the state's juvenile drug courts have proven
153 to be highly effective in treating drug addictions, and
154 rehabilitating drug addicted youth and improving their
155 educational outcomes;

156 (33) Services provided by juvenile drug courts include
157 substance abuse treatment, intervention, assessment, juvenile
158 and family counseling, heavy supervision by probation
159 officers including school-based probation officers who
160 provide early intervention and diversion services, and
161 addressing some of the underlying reasons why students are
162 not successful in school;

163 (34) School participation and attendance are required for
164 students participating in juvenile drug courts, and along with
165 academic progress are closely monitored by the courts;

166 (35) Juvenile drug courts are an important strategy to
167 improve substance abuse treatment outcomes, and serve to
168 save the state significant cost on incarceration of the
169 juveniles, along with the future costs to society of individuals
170 who remain substance abusers;

171 (36) Juvenile drug courts produce greater cost benefits
172 than other strategies that address criminal activity related to
173 substance abuse and addiction that bring individuals into the
174 criminal justice system;

175 (37) Funding for the increased number of students
176 enrolled in school during the 2010-2011 school year due to
177 the compulsory school attendance age increase established by
178 this act will not be reflected in the state aid formula allocation
179 until the 2011-2012 school year, which will require
180 additional funds to be provided to county boards for the
181 2010-2011 school year to accommodate the increased
182 enrollment;

183 (38) The state will benefit both fiscally and through
184 improved quality of life if scarce state resources are targeted
185 toward programs that result in providing a competitive
186 advantage as adults for those students who are at risk of
187 dropping out of school;

188 (39) Funds invested toward education and ensuring that
189 students complete high school pay tremendous dividends
190 through the moneys saved on incarceration, unemployment
191 and underemployment as those students reach adulthood;

192 (40) Increasing the compulsory school attendance age
193 will have little effect in aiding students to complete high
194 school if additional resources, both fiscal and programmatic,
195 are not dedicated to supporting student achievement,
196 providing real-life relevancy in curriculum, and engaging
197 students in learning, particularly for those students who have
198 become so disengaged from school and learning that they are
199 at risk of dropping out of school; and

200 (41) Schools cannot solve the dropout problem alone.
201 Research shows when educators, parents, elected officials,
202 business leaders, faith-based leaders, human service

203 personnel, judicial personnel and civic leaders collectively
204 work together they are often able to find innovative solutions
205 to address school and community problems.

206 (c) The Legislature intends as follows:

207 (1) The state will continue to explore diverse instructional
208 delivery strategies to accommodate various learning styles
209 and will focus on a state-wide dropout intervention and
210 prevention program to provide support for students having
211 academic difficulty;

212 (2) A general credit recovery program shall be
213 implemented statewide, including delivery through West
214 Virginia virtual schools;

215 (3) The state board will continue to improve the way
216 career-technical education is offered, including expansion of
217 the Techademics program;

218 (4) Up to five additional juvenile drug courts shall be
219 established by January 1, 2012;

220 (5) The state will invest additional state funds and other
221 resources in strategies and programs that engage
222 disconnected and discouraged students in a positive learning
223 environment as a critical first step to ensuring that students
224 persist and graduate;

225 (6) County boards will develop plans to demonstrate how
226 they will use available funds to implement the intent of this
227 section; and

228 (7) The state board shall develop a statewide system in
229 electronic format that will provide schools with easily
230 identifiable early warning indicators of students at risk of not
231 graduating from high school. The system shall be delivered
232 through the uniform integrated regional computer

233 information system (commonly known as the West Virginia
234 Education Information System) and shall at a minimum
235 incorporate data on the attendance, academic performance
236 and disciplinary infractions of individual students. The state
237 board shall require implementation of the system in Local
238 Solution Dropout Prevention and Recovery Innovation Zones
239 along with a plan of interventions to increase the number of
240 students earning a high school diploma, and may utilize the
241 zones as a pilot test of the system.

242 (d) Each county board shall include in its alternative
243 education program plan required by section six, article two,
244 of this chapter a plan to improve student retention and
245 increase the graduation rate in the county. The plan is subject
246 to approval of the state board, and shall include strategies the
247 county board will implement to achieve the following goals:

248 (1) Increasing the graduation rate for the county;

249 (2) Identifying at the earliest age possible those students
250 who are at risk of dropping out of school prior to graduation;
251 and

252 (3) Providing additional options for delivering to at-risk
253 students academic credentials and career-technical training if
254 appropriate or desired by the student. The options may
255 include such programs as Techademics, Earn a Degree-
256 Graduate Early (EDGE), Health Sciences and Technology
257 Academy (HSTA), Gaining Early Awareness and Readiness
258 for Undergraduate Programs (GEAR UP), truancy diversion,
259 early intervention, dropout prevention, prevention resource
260 officers, GED option, credit recovery, alternative learning
261 environments, or any other program or strategy approved by
262 the state board.

263 (e) As soon as is practicable the state superintendent or
264 his or her designee shall pursue designation of West Virginia

265 as a “GED Option” state by the American Council on
266 Education. If so designated, the state board shall:

267 (1) Develop and implement a program whereby a student
268 may pursue a GED diploma while remaining enrolled in high
269 school; and

270 (2) Ensure that the GED Option is offered to students
271 attending the Mountaineer Challenge Academy.

272 (f) The state board shall continue to expand:

273 (1) The Techademics program to include each major
274 academic subject and increase the academic credit available
275 through the program to students; and

276 (2) The Health Sciences and Technology Academy to
277 ensure that the program is available for any school containing
278 any of the grade levels of eligible students.

279 (g) The state board shall ensure that the dropout
280 information required by section twenty-four, article one-b,
281 chapter fifteen of this code is provided annually to the
282 Mountaineer Challenge Academy.

283 (h) Some career and technical education programs only
284 accept students in certain upper high school grade levels due
285 to lack of capacity to accept the students in the lower high
286 school grade levels. This can be detrimental to efforts to
287 keep students identified as at risk of dropping out of school
288 prior to graduation in school. Therefore, those career and
289 technical education programs that limit enrollment to
290 students in certain upper high school grade levels may make
291 exceptions for those at risk students and enroll any of those
292 at risk students who are in grades nine and above.

CHAPTER 54

**(Com. Sub. for S. B. 373 - By Senators Kessler
(Acting President) and Hall)
[By Request of the Executive]**

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9D-4c; to amend and reenact §18-9D-15 of said code; and to amend said code by adding thereto a new section, designated §18-9D-19a, all relating to funding and financing comprehensive middle schools and other School Building Authority projects and expenditures; providing the School Building Authority the ability to temporarily finance project costs and expenditures for public schools through loans, notes or other financing; limiting the amount of outstanding loans, notes or other financing; providing that principal, interest and premium on loans, notes or other financing must be paid from certain sources; allowing, upon application by a county board of education, the School Building Authority to allocate and expend certain moneys for school major improvement projects for vocational programs at comprehensive middle schools; providing legislative findings; providing for definition of “comprehensive middle high school” by state board rule; providing minimum contents of rule; requiring the authority, when planning the construction of a middle or junior high school, to provide funding for a comprehensive middle school that includes comprehensive career technical education facilities to be located, when feasible, on the same site as the middle or junior high school under certain conditions; requiring the authority, upon

application of a county board to construct comprehensive career technical education facilities that would allow an existing middle or junior high school to become a comprehensive middle school, to provide technical assistance to the county in developing a plan for construction of the comprehensive career technical education facility; and requiring, upon development of the plan, the authority to consider funding based on certain criteria.

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 §18-9D-4c; that §18-9D-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9D-19a, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-4c. School Building Authority authorized to temporarily finance projects through the issuance of loans, notes or other evidences of indebtedness.

1 The School Building Authority may by resolution, in
2 accordance with the provisions of this article, temporarily
3 finance the cost of projects and other expenditures permitted
4 under this article for public schools, including, but not
5 limited to, comprehensive high schools and comprehensive
6 middle schools as defined in this article, in this state through
7 the issuance of loans, notes or other evidences of
8 indebtedness: *Provided*, That the principal amount of loans,
9 notes or other evidences of indebtedness outstanding at any
10 one time shall not exceed \$16 million: *Provided, however*,
11 That the principal of, interest and premium, if any, on and
12 fees associated with any such temporary financing shall be
13 payable solely from the sources from which the principal of,

14 interest and premium, if any, on bonds is payable under this
15 article or from the proceeds of bonds.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

1 (a) It is the intent of the Legislature to empower the
2 School Building Authority to facilitate and provide state
3 funds and to administer all federal funds provided for the
4 construction and major improvement of school facilities so as
5 to meet the educational needs of the people of this state in an
6 efficient and economical manner. The authority shall make
7 funding determinations in accordance with the provisions of
8 this article and shall assess existing school facilities and each
9 facility's school major improvement plan in relation to the
10 needs of the individual student, the general school
11 population, the communities served by the facilities and
12 facility needs statewide.

13 (b) An amount that is not more than three percent of the
14 sum of moneys that are determined by the authority to be
15 available for distribution during the then current fiscal year
16 from:

17 (1) Moneys paid into the School Building Capital
18 Improvements Fund pursuant to section ten, article nine-a of
19 this chapter;

20 (2) The issuance of revenue bonds for which moneys in
21 the School Building Debt Service Fund or the Excess Lottery
22 School Building Debt Service Fund are pledged as security;

23 (3) Moneys paid into the School Construction Fund
24 pursuant to section six of this article; and

25 (4) Any other moneys received by the authority, except
26 moneys paid into the School Major Improvement Fund
27 pursuant to section six of this article and moneys deposited
28 into the School Access Safety Fund pursuant to section five,
29 article nine-f of this chapter, may be allocated and may be
30 expended by the authority for projects authorized in
31 accordance with the provisions of section sixteen of this
32 article that service the educational community statewide or,
33 upon application by the state board, for educational programs
34 that are under the jurisdiction of the state board. In addition,
35 upon application by the state board or the administrative
36 council of an area vocational educational center established
37 pursuant to article two-b of this chapter, the authority may
38 allocate and expend under this subsection moneys for school
39 major improvement projects authorized in accordance with
40 the provisions of section sixteen of this article proposed by
41 the state board or an administrative council for school
42 facilities under the direct supervision of the state board or an
43 administrative council, respectively. Furthermore, upon
44 application by a county board, the authority may allocate and
45 expend under this subsection moneys for school major
46 improvement projects for vocational programs at
47 comprehensive high schools, vocational programs at
48 comprehensive middle schools, vocational schools cooperating
49 with community and technical college programs, or any
50 combination of the three. Each county board is encouraged to
51 cooperate with community and technical colleges in the use of
52 existing or development of new vocational technical facilities.
53 All projects eligible for funds from this subsection shall be
54 submitted directly to the authority which shall be solely
55 responsible for the project's evaluation, subject to the following:

56 (A) The authority may not expend any moneys for a
57 school major improvement project proposed by the state

58 board or the administrative council of an area vocational
59 educational center unless the state board or an administrative
60 council has submitted a ten-year facilities plan; and

61 (B) The authority shall, before allocating any moneys to
62 the state board or the administrative council of an area
63 vocational educational center for a school improvement
64 project, consider all other funding sources available for the
65 project.

66 (c) An amount that is not more than two percent of the
67 moneys that are determined by the authority to be available
68 for distribution during the current fiscal year from:

69 (1) Moneys paid into the School Building Capital
70 Improvements Fund pursuant to section ten, article nine-a of
71 this chapter;

72 (2) The issuance of revenue bonds for which moneys in
73 the School Building Debt Service Fund or the Excess Lottery
74 School Building Debt Service Fund are pledged as security;

75 (3) Moneys paid into the School Construction Fund
76 pursuant to section six of this article; and

77 (4) Any other moneys received by the authority, except
78 moneys deposited into the School Major Improvement Fund
79 and moneys deposited into the School Access Safety Fund
80 pursuant to section five, article nine-f of this chapter, shall be
81 set aside by the authority as an emergency fund to be
82 distributed in accordance with the guidelines adopted by the
83 authority.

84 (d) An amount that is not more than five percent of the
85 moneys that are determined by the authority to be available
86 for distribution during the current fiscal year from:

87 (1) Moneys paid into the School Building Capital
88 Improvements Fund pursuant to section ten, article nine-a of
89 this chapter;

90 (2) The issuance of revenue bonds for which moneys in
91 the School Building Debt Service Fund or the Excess Lottery
92 School Building Debt Service Fund are pledged as security;

93 (3) Moneys paid into the School Construction Fund
94 pursuant to section six of this article; and

95 (4) Any other moneys received by the authority, except
96 moneys deposited into the School Major Improvement Fund and
97 moneys deposited into the School Access Safety Fund pursuant
98 to section five, article nine-f of this chapter, may be reserved by
99 the authority for multiuse vocational-technical education
100 facilities projects that may include post-secondary programs as
101 a first priority use. The authority may allocate and expend under
102 this subsection moneys for any purposes authorized in this
103 article on multiuse vocational-technical education facilities
104 projects, including equipment and equipment updates at the
105 facilities, authorized in accordance with the provisions of section
106 sixteen of this article. If the projects approved under this
107 subsection do not require the full amount of moneys reserved,
108 moneys above the amount required may be allocated and
109 expended in accordance with other provisions of this article. A
110 county board, the state board, an administrative council or the
111 joint administrative board of a vocational-technical education
112 facility which includes post-secondary programs may propose
113 projects for facilities or equipment, or both, which are under the
114 direct supervision of the respective body: *Provided*, That the
115 authority shall, before allocating any moneys for a project under
116 this subsection, consider all other funding sources available for
117 the project.

118 (e) The remaining moneys determined by the authority to
119 be available for distribution during the then current fiscal
120 year from:

121 (1) Moneys paid into the School Building Capital
122 Improvements Fund pursuant to section ten, article nine-a of
123 this chapter;

124 (2) The issuance of revenue bonds for which moneys in
125 the School Building Debt Service Fund or the Excess Lottery
126 School Building Debt Service Fund are pledged as security;

127 (3) Moneys paid into the School Construction Fund
128 pursuant to section six of this article; and

129 (4) Any other moneys received by the authority, except
130 moneys deposited into the School Major Improvement Fund
131 and moneys deposited into the School Access Safety Fund
132 pursuant to section five, article nine-f of this chapter, shall be
133 allocated and expended on the basis of need and efficient use
134 of resources for projects funded in accordance with the
135 provisions of section sixteen of this article.

136 (f) If a county board proposes to finance a project that is
137 authorized in accordance with section sixteen of this article
138 through a lease with an option to purchase leased premises
139 upon the expiration of the total lease period pursuant to an
140 investment contract, the authority may not allocate moneys
141 to the county board in connection with the project: *Provided,*
142 That the authority may transfer moneys to the state board
143 which, with the authority, shall lend the amount transferred
144 to the county board to be used only for a one-time payment
145 due at the beginning of the lease term, made for the purpose
146 of reducing annual lease payments under the investment
147 contract, subject to the following conditions:

148 (1) The loan shall be secured in the manner required by
149 the authority, in consultation with the state board, and shall
150 be repaid in a period and bear interest at a rate as determined
151 by the state board and the authority and shall have any terms
152 and conditions that are required by the authority, all of which

153 shall be set forth in a loan agreement among the authority, the
154 state board and the county board;

155 (2) The loan agreement shall provide for the state board
156 and the authority to defer the payment of principal and
157 interest upon any loan made to the county board during the
158 term of the investment contract, and annual renewals of the
159 investment contract, among the state board, the authority, the
160 county board and a lessor, subject to the following:

161 (A) In the event a county board which has received a loan
162 from the authority for a one-time payment at the beginning of
163 the lease term does not renew the lease annually until
164 performance of the investment contract in its entirety is
165 completed, the county board is in default and the principal of
166 the loan, together with all unpaid interest accrued to the date
167 of the default, shall, at the option of the authority, in
168 consultation with the state board, become due and payable
169 immediately or subject to renegotiation among the state
170 board, the authority and the county board;

171 (B) If a county board renews the lease annually through
172 the performance of the investment contract in its entirety, the
173 county board shall exercise its option to purchase the leased
174 premises;

175 (C) The failure of the county board to make a scheduled
176 payment pursuant to the investment contract constitutes an
177 event of default under the loan agreement;

178 (D) Upon a default by a county board, the principal of the
179 loan, together with all unpaid interest accrued to the date of
180 the default, shall, at the option of the authority, in
181 consultation with the state board, become due and payable
182 immediately or subject to renegotiation among the state
183 board, the authority and the county board; and

184 (E) If the loan becomes due and payable immediately, the
185 authority, in consultation with the state board, shall use all
186 means available under the loan agreement and law to collect
187 the outstanding principal balance of the loan, together with
188 all unpaid interest accrued to the date of payment of the
189 outstanding principal balance; and

190 (3) The loan agreement shall provide for the state board
191 and the authority to forgive all principal and interest of the
192 loan upon the county board purchasing the leased premises
193 pursuant to the investment contract and performance of the
194 investment contract in its entirety.

195 (g) To encourage county boards to proceed promptly with
196 facilities planning and to prepare for the expenditure of any
197 state moneys derived from the sources described in this
198 section, any county board or other entity to whom moneys
199 are allocated by the authority that fails to expend the money
200 within three years of the allocation shall forfeit the allocation
201 and thereafter is ineligible for further allocations pursuant to
202 this section until it is ready to expend funds in accordance
203 with an approved facilities plan: *Provided*, That the authority
204 may authorize an extension beyond the three-year forfeiture
205 period not to exceed an additional two years. Any amount
206 forfeited shall be added to the total funds available in the
207 School Construction Fund of the authority for future
208 allocation and distribution. Funds may not be distributed for
209 any project under this article unless the responsible entity has
210 a facilities plan approved by the state board and the School
211 Building Authority and is prepared to commence expenditure
212 of the funds during the fiscal year in which the moneys are
213 distributed.

214 (h) The remaining moneys that are determined by the
215 authority to be available for distribution during the then
216 current fiscal year from moneys paid into the School Major
217 Improvement Fund pursuant to section six of this article shall

218 be allocated and distributed on the basis of need and efficient
219 use of resources for projects authorized in accordance with
220 the provisions of section sixteen of this article, subject to the
221 following:

222 (1) The moneys may not be distributed for any project
223 under this section unless the responsible entity has a facilities
224 plan approved by the state board and the authority and is to
225 commence expenditures of the funds during the fiscal year in
226 which the moneys are distributed;

227 (2) Any moneys allocated to a project and not distributed
228 for that project shall be deposited in an account to the credit
229 of the project, the principal amount to remain to the credit of
230 and available to the project for a period of two years; and

231 (3) Any moneys which are unexpended after a two-year
232 period shall be redistributed on the basis of need from the
233 School Major Improvement Fund in that fiscal year.

234 (i) Local matching funds may not be required under the
235 provisions of this section. However, this article does not
236 negate the responsibilities of the county boards to maintain
237 school facilities. To be eligible to receive an allocation of
238 school major improvement funds from the authority, a county
239 board must have expended in the previous fiscal year an
240 amount of county moneys equal to or exceeding the lowest
241 average amount of money included in the county board's
242 maintenance budget over any three of the previous five years
243 and must have budgeted an amount equal to or greater than
244 the average in the current fiscal year: *Provided*, That the state
245 board shall promulgate rules relating to county boards'
246 maintenance budgets, including items which shall be
247 included in the budgets.

248 (j) Any county board may use moneys provided by the
249 authority under this article in conjunction with local funds

250 derived from bonding, special levy or other sources.
251 Distribution to a county board, or to the state board or the
252 administrative council of an area vocational educational
253 center pursuant to subsection (b) of this section, may be in a
254 lump sum or in accordance with a schedule of payments
255 adopted by the authority pursuant to guidelines adopted by
256 the authority.

257 (k) Funds in the School Construction Fund shall first be
258 transferred and expended as follows:

259 (1) Any funds deposited in the School Construction Fund
260 shall be expended first in accordance with an appropriation
261 by the Legislature.

262 (2) To the extent that funds are available in the School
263 Construction Fund in excess of that amount appropriated in
264 any fiscal year, the excess funds may be expended for
265 projects authorized in accordance with the provisions of
266 section sixteen of this article.

267 (l) It is the intent of the Legislature to encourage county
268 boards to explore and consider arrangements with other
269 counties that may facilitate the highest and best use of all
270 available funds, which may result in improved transportation
271 arrangements for students or which otherwise may create
272 efficiencies for county boards and the students. In order to
273 address the intent of the Legislature contained in this
274 subsection, the authority shall grant preference to those
275 projects which involve multicounty arrangements as the
276 authority shall determine reasonable and proper.

277 (m) County boards shall submit all designs for
278 construction of new school buildings to the School Building
279 Authority for review and approval prior to preparation of
280 final bid documents. A vendor who has been debarred
281 pursuant to the provisions of sections thirty-three-a through

282 thirty-three-f, inclusive, article three, chapter five-a of this
283 code may not bid on or be awarded a contract under this
284 section.

285 (n) The authority may elect to disburse funds for
286 approved construction projects over a period of more than
287 one year subject to the following:

288 (1) The authority may not approve the funding of a
289 school construction project over a period of more than three
290 years;

291 (2) The authority may not approve the use of more than
292 fifty percent of the revenue available for distribution in any
293 given fiscal year for projects that are to be funded over a
294 period of more than one year; and

295 (3) In order to encourage local participation in funding
296 school construction projects, the authority may set aside
297 limited funding, not to exceed \$500,000, in reserve for one
298 additional year to provide a county the opportunity to
299 complete financial planning for a project prior to the
300 allocation of construction funds. Any funding shall be on a
301 reserve basis and converted to a part of the construction grant
302 only after all project budget funds have been secured and all
303 county commitments have been fulfilled. Failure of the
304 county to solidify the project budget and meet its obligations
305 to the state within eighteen months of the date the funding is
306 set aside by the authority will result in expiration of the
307 reserve and the funds shall be reallocated by the authority in
308 the succeeding funding cycle.

§18-9D-19a. Comprehensive middle schools.

1 (a) The Legislature finds the following:

2 (1) Students learn more through hands on, applied
3 learning activities;

4 (2) Career technical education students have a much
5 higher graduation rate than other students;

6 (3) Although thirty-seven percent of West Virginia
7 middle and junior high school students are enrolled in a form
8 of career technical education, the number has been dropping
9 by approximately three thousand students per year; and

10 (4) As the benefits of career technical education have
11 increased as academics have become more embedded in
12 career technical education, it is important that career
13 technical education opportunities be increased at the middle
14 and junior high school level.

15 (b) “Comprehensive middle school” means a middle or
16 junior high school that meets the definition of a
17 comprehensive middle school established by the state board.
18 The definition of a comprehensive middle school shall be
19 established by the state board in a legislative rule
20 promulgated in accordance with article three-b, chapter
21 twenty-nine-a of this code. The definition shall include at
22 least the following:

23 (1) A comprehensive curriculum that:

24 (A) Includes the core subjects in English/language arts,
25 mathematics, science, social studies;

26 (B) Provides students with engaging learning
27 opportunities where students are provided connections
28 between what they are learning and what they will learn in
29 high school and beyond;

30 (C) Establishes the foundation for college and career
31 readiness;

32 (D) Embeds career exploration and project based career
33 activities where possible to provide all student with
34 comprehensive career development and counseling;

35 (E) Provides career technical options for students that are
36 integrated with academic course requirements where
37 possible; and

38 (F) Provides authentic opportunities in the visual and
39 performing arts, health and wellness, physical education,
40 world languages and career technical activities;

41 (2) Harnessing the power of technology to provide
42 personalized learning twenty-four hours per day and seven
43 days per week and produce a digital individualized student
44 portfolio of student mastery and progression; and

45 (3) A seamless integration with the secondary school
46 curriculum that enables students to further explore their
47 options and further pursue their career interests at the
48 secondary and post-secondary levels.

49 (c) When planning the construction of a middle or junior
50 high school which has been approved by the authority and
51 which meets the required authority efficiencies, the authority
52 shall provide funding for a comprehensive middle school that
53 includes comprehensive career technical education facilities
54 to be located, when feasible, on the same site as the middle
55 or junior high school.

56 (d) Upon application of a county board to construct
57 comprehensive career technical education facilities that would
58 allow an existing middle or junior high school to become a
59 comprehensive middle school, the authority will provide
60 technical assistance to the county in developing a plan for
61 construction of the comprehensive career technical education
62 facility. Upon development of the plan, the authority shall
63 consider funding based on the following criteria:

- 64 (1) The ability of the county board to provide local funds
65 for the construction of the comprehensive career technical
66 education facilities;
- 67 (2) The size of the existing middle and junior high
68 schools;
- 69 (3) The age and physical condition of the existing career
70 technical education facilities;
- 71 (4) The potential for improving in the graduation rate; and
- 72 (5) Such other criteria as the authority shall consider
73 appropriate.



CHAPTER 55

**(Com. Sub. for S. B. 592 - By Senators Palumbo,
Stollings, Plymale, Unger, Browning, Minard,
Foster, Wells, Fanning, Jenkins, Tucker,
and Kessler (Acting President))**

[Passed March 11, 2011; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18-9F-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9F-9; and to amend and reenact §18-28-2 of said code, all relating to requiring crisis response plans for all schools; updating legislative findings and intent; requiring the state board in conjunction with the Division of Homeland Security and Emergency Management promulgate legislative rule by certain date for school specific

crisis response plan establishment, minimum content, safeguards, updating, filing, informing and training school personnel, release of information to public; procedures for non public schools; authorizing emergency rule; considerations in developing rule; minimum contents of rule; requiring plan filing with county boards and certain disposition including public inspection of redacted copies and notice to parents; and requiring private, parochial and religious schools to establish, file and update school specific crisis response plan that complies with certain rule requirements.

Be it enacted by the Legislature of West Virginia:

That §18-9F-1 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 §18-9F-9; and that §18-28-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 9F. SCHOOL ACCESS SAFETY AND CRISIS RESPONSE ACT.

§18-9F-1. Legislative findings and intent.

1 (a) The Legislature finds that:

2 (1) Establishing and maintaining safe and secure schools
3 is critical to fostering a healthy learning environment and
4 maximizing student achievement;

5 (2) All school facilities in the state should be designed,
6 constructed, furnished and maintained in a manner that
7 enhances a healthy learning environment and provides
8 necessary safeguards for the health, safety and security of
9 persons who enter and use the facilities;

10 (3) Adequate safeguards for the ingress to and egress
11 from school facilities of pupils, school employees, parents,

12 visitors and emergency personnel are critical to the overall
13 safety of the public schools in this state;

14 (4) Safety upgrades to the means of ingress to and egress
15 from school facilities for pupils, school employees, parents,
16 visitors and emergency personnel must be part of a
17 comprehensive analysis of overall school safety issues that
18 takes into consideration the input of local law-enforcement
19 agencies, local emergency services agencies, community
20 leaders, parents, pupils, teachers, administrators and other
21 school employees interested in the prevention of school crime
22 and violence;

23 (5) In order to help ensure safety in all schools within the
24 state and to be prepared to adequately respond to potential
25 crises, including any traumatic event or emergency condition
26 that creates distress, hardship, fear or grief, each school must
27 have an up-to-date comprehensive crisis response plan as
28 detailed in section nine of this article.

29 (b) It is the intent of the Legislature to empower the
30 School Building Authority to facilitate and provide state
31 funds for the design, construction, renovation, repair and
32 upgrading of facilities so as to enhance school access safety
33 and provide secure ingress to and egress from school
34 facilities to pupils, school employees, parents, visitors and
35 emergency personnel.

§18-9F-9. Crisis Response Plan.

1 (a) The state board in conjunction with the Division of
2 Homeland Security and Emergency Management shall
3 promulgate by December 31, 2011, a legislative rule in
4 accordance with article three-b, chapter twenty-nine-a of this
5 code, and if necessary may promulgate an emergency rule in
6 accordance with said article, for the establishment of an up-
7 to-date, school specific crisis response plan at every school

8 in the state. In developing the rule, the state board shall consider
9 plans currently being developed as part of the safe schools
10 initiative currently underway by the School Building Authority
11 and the Division of Homeland Security and Emergency
12 Management. In addition, those portions of a school's access
13 safety plan created pursuant to section three of this article may
14 be used as a portion of the school's school specific crisis
15 response plan if there are any overlapping requirements. The
16 rule shall provide for at least the following:

17 (1) A model school crisis response plan for use by each
18 school in the state, including a uniform template which shall
19 be used by each school to file the plan, including at least the
20 following information, in a secure electronic system
21 identified by the Division of Homeland Security and
22 Emergency Management:

23 (A) The school employee in charge during a crisis and a
24 designated substitute;

25 (B) A communication plan to be used during a crisis;

26 (C) Protocols for responding to immediate physical harm
27 of students, faculty or staff and to traumatic events, including
28 the period after the events have concluded;

29 (D) Disaster and emergency procedures to respond to
30 earthquakes, fire, flood, other natural disasters, explosions or
31 other events or conditions in which death or serious injury is
32 likely;

33 (E) Crisis procedures for safe entrance to and exit from
34 the school by students, parents, and employees, including an
35 evacuation and lock down plan; and

36 (F) Policies and procedures for enforcing school
37 discipline and maintaining a safe and orderly environment
38 during the crisis.

39 (2) A requirement that each school's school specific
40 crisis response plan shall be in place and filed with that
41 school's county board, and included in a secure electronic
42 system identified by the Division of Homeland Security and
43 Emergency Management, no later than August 1, 2013, or
44 soon after completion by the school, whichever occurs first;

45 (3) The necessary safeguards to protect information
46 contained in each school specific crisis response plan that
47 may be considered protected critical infrastructure
48 information, law enforcement sensitive information or for
49 official use only. These safeguards must have the approval
50 the Division of Homeland Security and Emergency
51 Management .County boards shall provide the same
52 necessary safeguards for the information in the plan;

53 (4) The annual review and necessary update of the model
54 plan and uniform template by state board in conjunction with
55 the Division of Homeland Security and Emergency
56 Management by December 31 of each year after 2011;

57 (5) The development by each school of a school specific
58 crisis response plan by using the state board's model plan as
59 an example and with consultation from local social services
60 agencies, local first response agencies including police, fire,
61 emergency medical services (EMS), emergency management
62 and any other local entities that the school's crisis response
63 planning team determines should be consulted;

64 (6) Procedures for the annual review and update if
65 necessary by each school of its school specific crisis response
66 planning plan. Each school shall file either an updated crisis
67 response plan or a memorandum stating that no update to the
68 crisis response plan was necessary with its county board and
69 the Division of Homeland Security and Emergency
70 Management no later than August 1 of each year after 2013.

71 (7) Procedures for each school within the state to form a
72 crisis response planning team, which team may consist of the
73 school's Local School Improvement Council or a separate
74 team consisting of the principal, two teachers, one service
75 person and two parents of children attending the school. In
76 addition the school may include on the team one member of
77 the county board, a school counselor, a member from local
78 law-enforcement authorities, the local county emergency
79 services director and one student in grade ten or higher if the
80 school has those grades;

81 (8) Procedures for informing and training school
82 personnel on any actions required of them to effectuate the
83 school's school specific crisis response plan;

84 (9) A model template for redacted copies of the school
85 crisis response plan for the public inspection and for the
86 release and notice to parents of information related to the
87 plan; and

88 (10) Procedures for non public schools to establish, file
89 and update school crisis response plans consistent with
90 subdivision (1) subsection (a) of this section.

91 (b) The county board shall keep the current crisis
92 response plan of each school in the county on file and, unless
93 otherwise provided for, provide a copy of each school's crisis
94 response plan to each local emergency response agency that
95 has a role in the plan. Local emergency response agencies
96 that maintain a copy of the plan shall provide the necessary
97 safeguards for the information in the plan established
98 pursuant to the state board rule promulgated pursuant to
99 subsection (a) of this section. Upon request, a redacted copy
100 of a school crisis response plan shall be made available for
101 inspection by the public with any information removed that
102 is necessary for compliance with the necessary safeguards.
103 Starting with the 2012-2013 school year, each school shall

104 annually send notice home to all parents and guardians of
105 students at the school alerting the parents and guardians to
106 the existence of the crisis response plan and the ability to
107 review a redacted copy at the offices of the county board.

**ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH
SCHOOLS OR SCHOOLS OF A
RELIGIOUS ORDER.**

§18-28-2. Attendance; health and safety regulations.

1 The following is applicable to private, parochial or
2 church schools or schools of a religious order:

3 (a) Each school shall observe a minimum instructional
4 term of one hundred eighty days with an average of five
5 hours of instruction per day;

6 (b) Each school shall make and maintain annual
7 attendance and disease immunization records for each pupil
8 enrolled and regularly attending classes. The attendance
9 records shall be made available to the parents or legal
10 guardians;

11 (c) Upon the request of the county superintendent, a
12 school (or a parents organization composed of the parents or
13 guardians of children enrolled in the school) shall furnish to
14 the county board a list of the names and addresses of all
15 children enrolled in the school between the ages of seven and
16 sixteen years;

17 (d) Attendance by a child at any school which complies
18 with this article satisfies the requirements of compulsory
19 school attendance;

20 (e) Each school is subject to reasonable fire, health and
21 safety inspections by state, county and municipal authorities

22 as required by law, and is required to comply with the West
23 Virginia school bus safety regulations; and

24 (f) Each school shall establish, file and update a school
25 specific crisis response plan which complies with the
26 requirements established for it by the state board and the
27 Division of Homeland Security and Emergency Management
28 pursuant to section nine, article nine-f of this chapter.



CHAPTER 56

**(Com. Sub. for H. B. 2550 - By Delegates
Jaquinta, Fleischauer, Longstreth, Stephens,
Walker and Azinger)**

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-10F-1 and §18-10F-2, all relating to the enactment of the Interstate Compact on Educational Opportunity for Military Children; establishing the West Virginia Council for Educational Opportunity for Military Children; designating membership; and establishing powers and duties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-10F-1 and §18-10F-2, all to read as follows:

**ARTICLE 10F. INTERSTATE COMPACT ON
EDUCATIONAL OPPORTUNITY
FOR MILITARY CHILDREN.**

**§18-10F-1. Interstate Compact on Educational Opportunity for
Military Children.**

1 This article is known and may be cited as the “Interstate
2 Compact on Educational Opportunity for Military Children”.

§18-10F-2. Enactment of Interstate Compact.

1 The Interstate Compact on Educational Opportunity for
2 Military Children is hereby enacted into law and entered into
3 by the State of West Virginia with any and all states legally
4 joining therein in accordance with its terms, in the form
5 substantially as follows:

6 INTERSTATE COMPACT ON EDUCATIONAL
7 OPPORTUNITY FOR MILITARY CHILDREN

8 ARTICLE I. PURPOSE

9 It is the purpose of this compact to remove barriers to
10 educational success imposed on children of military families
11 because of frequent moves and deployment of their parents by:

12 (a) Facilitating the timely enrollment of children of
13 military families and ensuring that they are not placed at a
14 disadvantage due to difficulty in the transfer of education
15 records from a previous school district or variations in
16 entrance or age requirements;

17 (b) Facilitating the student placement process through
18 which children of military families are not disadvantaged by
19 variations in attendance requirements, scheduling,
20 sequencing, grading, course content or assessment;

- 21 (c) Facilitating the qualification and eligibility for
22 enrollment, educational programs, and participation in
23 extracurricular academic, athletic and social activities;
- 24 (d) Facilitating the on-time graduation of children of
25 military families;
- 26 (e) Providing for the promulgation and enforcement of
27 administrative rules implementing the provisions of this
28 compact;
- 29 (f) Providing for the uniform collection and sharing of
30 information between and among member states, schools and
31 military families under this compact;
- 32 (g) Promoting coordination between this compact and
33 other compacts affecting military children; and
- 34 (h) Promoting flexibility and cooperation between the
35 educational system, parents and students in order to achieve
36 educational success for students.

37 ARTICLE II. DEFINITIONS

38 As used in this article and compact, unless the context
39 clearly requires a different meaning:

- 40 (a) “Active duty” means full-time duty status in any of
41 the active uniformed services of the United States, including
42 service in the National Guard and Reserve pursuant to active
43 duty orders in accordance with 10 U.S.C. Sections 1209 and
44 1211;
- 45 (b) “Child of a military family” means any school-aged
46 child enrolled in any of grades kindergarten through twelfth
47 who is in the household of an active duty uniformed services
48 member;

49 (c) “Compact commissioner” means the voting
50 representative of a compacting state appointed pursuant to
51 Article VIII of this compact;

52 (d) “Deployment” means the time period beginning one
53 month prior to a uniformed services member’s departure
54 from his or her home station on military orders and ending
55 six months after return to his or her home station;

56 (e) “Education records” means all documents, files, data
57 and official records directly related to a student and
58 maintained by a school or county board. This includes all
59 material kept in the student's cumulative file, such as but not
60 limited to generally-identifying data, attendance records,
61 academic work completion records, achievement records,
62 evaluative test results, health data, disciplinary records, test
63 protocols, and individualized education program or service
64 records;

65 (f) “Extracurricular activities” means voluntary activities
66 sponsored by a school, a county board or an organization
67 sanctioned by a county board or the state board of education.
68 Extracurricular activities include, but are not limited to,
69 preparation for and involvement in public performances,
70 contests, athletic competitions, demonstrations, displays,
71 organizations and clubs;

72 (g) “Interstate Commission on Educational Opportunity
73 for Military Children” or “Interstate Commission” means the
74 Commission that is created by Article IX of this compact;

75 (h) “County board” means a county board of education,
76 which is the public entity legally constituted by this state as
77 an administrative agency to provide control of and direction
78 for grades kindergarten through twelfth in the public schools
79 in the county in which it operates;

80 (i) "Member state" means a state that has enacted this
81 compact;

82 (j) "Military installation" means a base, camp, post,
83 station, yard, center, homeport facility for any ship, or other
84 facility under the jurisdiction of the Department of Defense,
85 including any leased facility, which is located within any of
86 the several states, the District of Columbia, the
87 Commonwealth of Puerto Rico, the U.S. Virgin Islands,
88 Guam, American Samoa, the Northern Marianas Islands or
89 any other United States Territory. "Military installation"
90 does not include any facility used primarily for civil works,
91 rivers and harbors projects, or flood control projects;

92 (k) "Non-member state" means a state that has not
93 enacted this compact;

94 (l) "Receiving state" means a state to which a child of a
95 military family is sent, brought, or caused to be sent or
96 brought;

97 (m) "Rule" means a written statement by the Interstate
98 Commission which:

99 (1) Is promulgated pursuant to Article XII of this
100 compact;

101 (2) Is of general applicability;

102 (3) Implements, interprets or prescribes a policy or
103 provision of this compact, or an organizational, procedural,
104 or practice requirement of the Interstate Commission;

105 (4) Has the force and effect of statutory law in a member
106 state; and

107 (5) May be amended, repealed, or suspended by act of the
108 Interstate Commission;

109 (n) “Sending state” means a state from which a child of
110 a military family is sent, brought, or caused to be sent or
111 brought;

112 (o) “State” means a state of the United States, the District
113 of Columbia, the Commonwealth of Puerto Rico, the U.S.
114 Virgin Islands, Guam, American Samoa, the Northern
115 Marianas Islands and any other United States Territory;

116 (p) “Student” means a child of a military family who is
117 formally enrolled in any of grades kindergarten through
118 twelfth and for whom a county board receives public
119 funding;

120 (q) “Transition” means:

121 (1) The formal and physical process of transferring from
122 one school to another; or

123 (2) The period of time during which a student moves
124 from one school in a sending state to another school in the
125 receiving state;

126 (r) “Uniformed services” means the Army, Navy, Air
127 Force, Marine Corps, Coast Guard, and the Commissioned
128 Corps of the National Oceanic and Atmospheric
129 Administration, and Public Health Services;

130 (s) “Veteran” means a person who performed active duty
131 service and was discharged or released therefrom under
132 conditions other than dishonorable; and

133 (t) “The West Virginia Council for Educational
134 Opportunity for Military Children” or “West Virginia
135 Council” means the state coordinating council established in
136 Article VIII of this compact.

137 ARTICLE III. APPLICABILITY

138 (a) This compact applies to:

139 (1) Each county board of education; and

140 (2) The children of:

141 (A) Active duty members of the uniformed services as
142 defined in this compact, including members of the National
143 Guard and Reserve on active duty orders pursuant to 10
144 U.S.C. Sections 1209 and 1211;

145 (B) Members or veterans of the uniformed services who
146 are severely injured and medically discharged or retired for
147 a period of one year after medical discharge or retirement;
148 and

149 (C) Members of the uniformed services who die on active
150 duty or as a result of injuries sustained on active duty for a
151 period of one (1) year after death.

152 (b) Except as provided in subsection (a) of this Article
153 III, this compact does not apply to the children of:

154 (1) Inactive members of the National Guard or military
155 reserves;

156 (2) Retired members of the uniformed services;

157 (3) Veterans of the uniformed services;

158 (4) Other United States Department of Defense
159 personnel; nor

160 (5) Any other federal agency civilian or contract
161 employees not defined as active duty members of the
162 uniformed services.

163 ARTICLE IV. EDUCATIONAL RECORDS &
164 ENROLLMENT

165 (a) *Unofficial or "hand-carried" education records --*

166 In the event that official education records cannot be
167 released to a student's parents or legal guardians for the
168 purpose of transfer, the custodian of the records in the
169 sending state shall prepare and furnish to the parents a
170 complete set of unofficial educational records containing
171 uniform information as determined by the Interstate
172 Commission. As quickly as possible upon receipt of the
173 unofficial education records by a school in the receiving
174 state, the school shall enroll and appropriately place the
175 student based on the information provided in the unofficial
176 records pending validation by the official records.

177 (b) *Official education records/transcripts --*

178 Simultaneous with the enrollment and conditional
179 placement of a student, the school in the receiving state shall
180 request the student's official education records from the
181 school in the sending state. Upon receipt of this request, the
182 school in the sending state shall process and furnish the
183 official education records to the school in the receiving state
184 within ten days or such other time period as is determined
185 reasonable under the rules promulgated by the Interstate
186 Commission.

187 (c) *Immunizations --*

188 (1) A county board shall allow a student thirty days from
189 the date of enrollment to obtain any required immunizations,
190 or such other time period as is determined reasonable under
191 the rules promulgated by the Interstate Commission.

192 (2) In any case where a series of immunizations is
193 required, the student shall obtain the initial vaccination

194 within thirty days of enrollment, or such other time period as
195 is determined reasonable under the rules promulgated by the
196 Interstate Commission.

197 (d) *Enrollment at current grade level --*

198 (1) A student shall be permitted to enroll in the grade
199 level in this state, including kindergarten, which is
200 commensurate with the grade level in which he or she was
201 enrolled in the sending state at the time of transition,
202 regardless of his or her age.

203 (2) A student that has satisfactorily completed the
204 prerequisite grade level in the sending state is eligible for
205 enrollment in the next highest grade level in this state,
206 regardless of his or her age.

207 ARTICLE V. PLACEMENT & ATTENDANCE

208 (a) *Course placement --*

209 (1) When a student transfers to this state before or during
210 the school year, the school in this state shall initially place the
211 student in educational courses based on the courses in which
212 he or she was enrolled in the sending state, educational
213 assessments conducted at the school in the sending state, or
214 both, if the courses are offered at the school to which the
215 student is transferring. This course placement provision
216 includes, but is not limited to Honors, International
217 Baccalaureate, Advanced Placement, vocational, technical
218 and career pathways courses.

219 (2) A school shall give paramount consideration to
220 continuing a student's academic program from the previous
221 school, and promoting placement in academically and career-
222 challenging courses, when considering course placement.

223 (3) A school is not precluded from performing
224 subsequent evaluations to ensure appropriate placement and
225 continued enrollment of the student in any course.

226 (b) *Educational program placement --*

227 When a student transfers to this state, the school shall
228 initially place the student in educational programs based on
229 current educational assessments conducted at the school in
230 the sending state or participation or placement in like
231 programs in the sending state. Such programs include, but
232 are not limited to gifted and talented programs and English as
233 a second language (ESL). A school is not precluded from
234 performing subsequent evaluations to ensure appropriate
235 placement of the student.

236 (c) *Special education services --*

237 (1) In compliance with the federal requirements of the
238 Individuals with Disabilities Education Act (IDEA), 20
239 U.S.C.A. Section 1400 et seq, a school in this state shall
240 initially provide comparable services to a student with
241 disabilities based on his or her current Individualized
242 Education Program (IEP); and

243 (2) In compliance with the requirements of Section 504
244 of the Rehabilitation Act, 29 U.S.C.A. Section 794 (Section
245 504), and with Title II of the Americans with Disabilities Act,
246 42 U.S.C.A. Sections 12131-12165 (Title II), any school in
247 this state shall make reasonable accommodations and
248 modifications to address the needs of incoming students with
249 disabilities, subject to an existing Section 504 or Title II plan,
250 to provide the student with equal access to education. The
251 school is not precluded from performing subsequent
252 evaluations to ensure appropriate placement of the student.

253 (d) *Placement flexibility --*

254 County board administrative officials have flexibility in
255 waiving course and program prerequisites, or other
256 preconditions for placement in courses or programs offered
257 under the authority of the county board.

258 (e) *Absence as related to deployment activities --*

259 A student whose parent or legal guardian is an active duty
260 member of the uniformed services and has been called to
261 duty for, is on leave from, or immediately returned from
262 deployment to a combat zone or combat support posting,
263 shall be granted additional excused absences at the discretion
264 of the county superintendent to visit with his or her parent or
265 legal guardian relative to such leave or deployment of the
266 parent or guardian.

267 ARTICLE VI. ELIGIBILITY

268 (a) *Eligibility for enrollment --*

269 (1) Special power of attorney, relative to the guardianship
270 of a child of a military family and executed under applicable
271 law is sufficient for the purposes of enrollment and all other
272 actions requiring parental participation and consent.

273 (2) A county board may not charge local tuition to a
274 transitioning military child placed in the care of a
275 noncustodial parent or other person standing in loco parentis
276 who lives in a school district other than that of the custodial
277 parent.

278 (3) A transitioning military child, placed in the care of a
279 noncustodial parent or other person standing in loco parentis
280 who lives in a school district other than that of the custodial
281 parent, may continue to attend the school in which he or she
282 was enrolled while residing with the custodial parent.

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(b) *Eligibility for extracurricular participation --*

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The State Board of Education and county boards shall facilitate the opportunity for transitioning military children to be included in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.

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ARTICLE VII. GRADUATION

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In order to facilitate the on-time graduation of children of military families the State Board of Education and each county board shall incorporate the following procedures:

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(a) *Waiver requirements --*

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County board administrative officials shall either waive specific courses required for graduation if a student has satisfactorily completed similar course work in another local education agency, or provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the county board shall provide an alternative means of acquiring required coursework so that the student may graduate on time.

302

(b) *Exit exams --*

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Any school in this state shall accept:

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(1) Exit or end-of-course exams required for graduation from the sending state;

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(2) National norm-referenced achievement tests; or

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(3) Alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event that the alternatives in this subsection cannot be accommodated by a

310 school for a student transferring in his or her senior year, then
311 the provisions of subsection (c) of Article VII of this compact
312 apply.

313 (c) *Transfers during senior year --*

314 If a student transferring at the beginning of or during his
315 or her senior year is ineligible to graduate from a school in
316 this state after all alternatives have been considered, the
317 county board and the local education agency in the sending
318 state shall ensure that the student receives a diploma from the
319 sending state, if the student meets the graduation
320 requirements of the local education agency in the sending
321 state. In the event that one of the states in question is not a
322 member of this compact, the member state shall use best
323 efforts to facilitate the on-time graduation of the student in
324 accordance with subsections (a) and (b) of this Article VII.

325 ARTICLE VIII. STATE COORDINATION

326 (a) The West Virginia Council for Educational
327 Opportunity for Military Children is hereby established for
328 the purpose of coordinating entities in this state regarding
329 participation in the Interstate Compact on Educational
330 Opportunity for Military Children.

331 (b) Membership of the Council consists of at least six
332 members as follows:

333 (1) The State Superintendent of Schools;

334 (2) The superintendent of a county board in the state
335 which has a high concentration of military children,
336 appointed by the Governor. If the Governor determines there
337 is not a county school district that contains a high
338 concentration of military children, he or she may appoint a
339 superintendent from any county school district to represent
340 county boards on the State Council;

341 (3) An individual representing a military installation in
342 this state appointed by the Governor by and with the advice
343 and consent of the Senate. This member serves a term of four
344 years, except that the term of the individual initially
345 appointed expires June 30, 2015. Each subsequent term
346 begins on July 1 in the year of appointment.

347 (4) An individual representing the executive branch of
348 government, appointed by the Governor;

349 (5) One member of the West Virginia Senate, appointed
350 by the President of the West Virginia Senate; and

351 (6) One member of the West Virginia House of
352 Delegates, appointed by the Speaker of the West Virginia
353 House of Delegates.

354 (c) The Governor shall appoint a Compact Commissioner
355 who is responsible for administering and managing the state's
356 participation in the compact. The Governor may select the
357 Commissioner from members appointed to the Council as
358 provided in subsection (b) of this Article VIII, or may
359 appoint another individual to serve in this capacity. An
360 individual who is not already a full voting member of the
361 Council becomes an ex-officio member of the Council if
362 appointed as Commissioner.

363 (d) The West Virginia Council has and may exercise all
364 powers necessary or appropriate to carry out and effectuate
365 the purpose and intent of this compact, including, but not
366 limited to the following:

367 (1) Facilitate coordination among state agencies and
368 governmental entities of West Virginia, including county
369 boards and military installations, concerning the state's
370 participation in, and compliance with, this compact and
371 Interstate Commission activities; and

372 (2) Appoint or designate a military family education
373 liaison to assist military families and the state in facilitating
374 implementation of the compact. This individual becomes an
375 ex-officio member of the West Virginia Council if he or she
376 is not already a full voting member of the Council when so
377 appointed or designated.

378 ARTICLE IX. INTERSTATE COMMISSION ON
379 EDUCATIONAL OPPORTUNITY FOR MILITARY
380 CHILDREN

381 (a) The member states hereby create the “Interstate
382 Commission on Educational Opportunity for Military
383 Children.” The activities of the Interstate Commission are
384 the formation of public policy and are a discretionary state
385 function.

386 (b) The Interstate Commission:

387 (1) Is a body corporate and joint agency of the member
388 states and has all the responsibilities, powers and duties set
389 forth herein, and such additional powers as may be conferred
390 upon it by a subsequent concurrent action of the respective
391 Legislatures of the member states in accordance with the
392 terms of this compact;

393 (2) Consists of one Interstate Commission voting
394 representative from each member state who is that state’s
395 Compact Commissioner.

396 (A) Each member state represented at a meeting of the
397 Interstate Commission is entitled to one vote.

398 (B) A majority of the total member states constitutes a
399 quorum for the transaction of business, unless a larger
400 quorum is required by the bylaws of the Interstate
401 Commission.

402 (C) A representative may not delegate a vote to another
403 member state. In the event a Compact Commissioner is
404 unable to attend a meeting of the Interstate Commission, the
405 Governor or State Council of the Compact Commissioner's
406 state may delegate voting authority to another person from
407 that state for a specified meeting.

408 (D) The bylaws may provide for meetings of the
409 Interstate Commission to be conducted by telecommunication
410 or electronic communication;

411 (3) Consists of ex-officio, nonvoting representatives who
412 are members of interested organizations. Such ex-officio
413 members, as defined in the bylaws, may include, but are not
414 limited to, members of the representative organizations of
415 military family advocates, local education agency officials,
416 parent and teacher groups, the United States Department of
417 Defense, the Education Commission of the States, the
418 Interstate Agreement on the Qualification of Educational
419 Personnel, and other interstate compacts affecting the
420 education of children of military members;

421 (4) Meets at least once each calendar year. The
422 chairperson may call additional meetings and, upon the
423 request of a simple majority of the member states, shall call
424 additional meetings;

425 (5) Establishes an executive committee, whose members
426 shall include the officers of the Interstate Commission and
427 such other members of the Interstate Commission as
428 established in the bylaws. Each member of the executive
429 committee serves a one year term. Each member of the
430 executive committee is entitled to one vote. The executive
431 committee has the power to act on behalf of the Interstate
432 Commission, with the exception of rulemaking, during
433 periods when the Interstate Commission is not in session.
434 The executive committee shall oversee the daily activities of
435 the administration of the compact, including enforcement and

436 compliance with the provisions of the compact, its bylaws
437 and rules, and such other duties as it determines are
438 necessary. A representative of the United States Department
439 of Defense serves as an ex-officio, nonvoting member of the
440 executive committee;

441 (6) Establishes bylaws and rules that provide for
442 conditions and procedures under which the Interstate
443 Commission makes its information and official records
444 available to the public for inspection or copying. The
445 Interstate Commission may exempt from disclosure
446 information or official records to the extent they would
447 adversely affect personal privacy rights or proprietary
448 interests;

449 (7) Gives public notice of all meetings. All meetings
450 shall be open to the public, except as set forth in the rules or
451 as otherwise provided in the compact. The Interstate
452 Commission and its committees may close a meeting, or
453 portion thereof, where it determines by two-thirds vote that
454 an open meeting would be likely to:

455 (A) Relate solely to the Interstate Commission's internal
456 personnel practices and procedures;

457 (B) Disclose matters specifically exempted from
458 disclosure by federal and state statute;

459 (C) Disclose trade secrets or commercial or financial
460 information which is privileged or confidential;

461 (D) Involve accusing a person of a crime, or formally
462 censuring a person;

463 (E) Disclose information of a personal nature where
464 disclosure would constitute a clearly unwarranted invasion of
465 personal privacy;

466 (F) Disclose investigative records compiled for law
467 enforcement purposes; or

468 (G) Specifically relate to the Interstate Commission's
469 participation in a civil action or other legal proceeding;

470 (8) Causes its legal counsel or designee to certify that a
471 meeting may be closed, and reference each relevant
472 exemptable provision for any meeting or portion of a meeting
473 which is closed pursuant to this provision. The Interstate
474 Commission shall maintain a minute record of each meeting
475 which shall fully and clearly describe all matters discussed in
476 the meeting. The minute record shall provide a full and
477 accurate summary of actions taken, and the reasons therefore,
478 including a description of the views expressed and the record
479 of a roll call vote. All documents considered in connection
480 with an action shall be identified in the minute record. All
481 minutes and documents of a closed meeting shall remain
482 under seal, subject to release by a majority vote of the
483 Interstate Commission.

484 (9) Collects standardized data concerning the educational
485 transition of the children of military families under this
486 compact as directed through its rules. The rules shall specify
487 the data to be collected, the means of collection and data
488 exchange and reporting requirements. Such methods of data
489 collection, exchange and reporting shall, in so far as is
490 reasonably possible, conform to current technology and
491 coordinate its information functions with the appropriate
492 custodian of records as identified in the bylaws and rules; and

493 (10) Creates a process that permits military officials,
494 education officials and parents to inform the Interstate
495 Commission if and when there are alleged violations of the
496 compact or its rules or when issues subject to the jurisdiction
497 of the compact or its rules are not addressed by the state or
498 local education agency. This subdivision does not create a

499 private right of action against the Interstate Commission or
500 any member state.

501 ARTICLE X. POWERS AND DUTIES OF THE
502 INTERSTATE COMMISSION

503 The Interstate Commission has the following powers:

504 (a) To provide for dispute resolution among member
505 states;

506 (b) To promulgate rules and take all necessary actions to
507 effect the goals, purposes and obligations as enumerated in
508 this compact. The rules have the force and effect of statutory
509 law and are binding in the compact states to the extent and in
510 the manner provided in this compact;

511 (c) To issue, upon request of a member state, advisory
512 opinions concerning the meaning or interpretation of the
513 compact, its bylaws, rules and actions;

514 (d) To enforce compliance with the compact provisions,
515 the rules promulgated by the Interstate Commission, and the
516 bylaws, using all necessary and proper means, including but
517 not limited to the use of judicial process;

518 (e) To establish and maintain offices which shall be
519 located within one or more of the member states;

520 (f) To purchase and maintain insurance and bonds;

521 (g) To borrow, accept, hire or contract for services of
522 personnel;

523 (h) To establish and appoint committees including, but
524 not limited to, an executive committee as required by Article
525 IX of this compact, which have the power to act on behalf of

526 the Interstate Commission in carrying out its powers and
527 duties hereunder;

528 (i) To elect or appoint such officers, attorneys,
529 employees, agents or consultants, and to fix their
530 compensation, define their duties and determine their
531 qualifications; and to establish the Interstate Commission's
532 personnel policies and programs relating to conflicts of
533 interest, rates of compensation, and qualifications of
534 personnel;

535 (j) To accept any and all donations and grants of money,
536 equipment, supplies, materials, and services, and to receive,
537 utilize, and dispose of such;

538 (k) To lease, purchase, accept contributions or donations
539 of, or otherwise to own, hold, improve or use any property,
540 real, personal, or mixed;

541 (l) To sell, convey, mortgage, pledge, lease, exchange,
542 abandon, or otherwise dispose of any property, real, personal
543 or mixed;

544 (m) To establish a budget and make expenditures;

545 (n) To adopt a seal and bylaws governing the
546 management and operation of the Interstate Commission;

547 (o) To report annually to the Legislatures, Governors,
548 judiciary, and state councils of the member states concerning
549 the activities of the Interstate Commission during the
550 preceding year. Such reports also shall include any
551 recommendations that may have been adopted by the
552 Interstate Commission;

553 (p) To coordinate education, training and public
554 awareness regarding the compact, its implementation and
555 operation for officials and parents involved in such activity;

556 (q) To establish uniform standards for reporting,
557 collecting and exchanging data;

558 (r) To maintain corporate books and records in
559 accordance with the bylaws;

560 (s) To perform such functions as may be necessary or
561 appropriate to achieve the purposes of this compact; and

562 (t) To provide for the uniform collection and sharing of
563 information between and among member states, schools and
564 military families under this compact.

565 ARTICLE XI. ORGANIZATION AND OPERATION OF
566 THE INTERSTATE COMMISSION

567 (a) The Interstate Commission shall, by a majority of the
568 members present and voting, within twelve months after the
569 first Interstate Commission meeting, adopt bylaws to govern
570 its conduct as may be necessary or appropriate to carry out
571 the purposes of the compact, including, but not limited to:

572 (1) Establishing the fiscal year of the Interstate
573 Commission;

574 (2) Establishing an executive committee, and such other
575 committees as may be necessary;

576 (3) Providing for the establishment of committees and for
577 governing any general or specific delegation of authority or
578 function of the Interstate Commission;

579 (4) Providing reasonable procedures for calling and
580 conducting meetings of the Interstate Commission, and
581 ensuring reasonable notice of each meeting;

582 (5) Establishing the titles and responsibilities of the
583 officers and staff of the Interstate Commission;

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584 (6) Providing a mechanism for concluding the operations
585 of the Interstate Commission and the returning surplus funds
586 that may exist upon termination of the compact after the
587 payment and reserving of all of its debts and obligations; and

588 (7) Providing start-up rules for initial administration of
589 the compact.

590 (b) The Interstate Commission shall, by a majority of the
591 members, elect annually from among its members a
592 chairperson, a vice-chairperson, and a treasurer, each of
593 whom shall have such authority and duties as may be
594 specified in the bylaws. The chairperson or, in the
595 chairperson's absence or disability, the vice-chairperson,
596 shall preside at all meetings of the Interstate Commission.
597 The officers so elected serve without compensation or
598 remuneration from the Interstate Commission. Subject to the
599 availability of budgeted funds, the officers shall be
600 reimbursed for ordinary and necessary costs and expenses
601 incurred by them in the performance of their responsibilities
602 as officers of the Interstate Commission.

603 (c) *Executive Committee, Officers and Personnel --*

604 (1) The executive committee has such authority and
605 duties as may be set forth in the bylaws, including but not
606 limited to:

607 (A) Managing the affairs of the Interstate Commission in
608 a manner consistent with the bylaws and purposes of the
609 Interstate Commission;

610 (B) Overseeing an organizational structure within, and
611 appropriate procedures for the Interstate Commission to
612 provide for the creation of rules, operating procedures, and
613 administrative and technical support functions; and

614 (C) Planning, implementing, and coordinating
615 communications and activities with other state, federal and
616 local government organizations in order to advance the goals
617 of the Interstate Commission.

618 (2) The executive committee may, subject to the approval
619 of the Interstate Commission, appoint or retain an executive
620 director for such period, upon such terms and conditions and
621 for such compensation, as the Interstate Commission may
622 deem appropriate. The executive director serves as secretary
623 to the Interstate Commission, but is not a Member of the
624 Interstate Commission. The executive director shall hire and
625 supervise such other persons as may be authorized by the
626 Interstate Commission.

627 (d) The Interstate Commission's executive director and
628 its employees are immune from suit and liability, either
629 personally or in their official capacity, for a claim for damage
630 to or loss of property or personal injury or other civil liability
631 caused or arising out of or relating to an actual or alleged act,
632 error, or omission that occurred, or that such person had a
633 reasonable basis for believing occurred, within the scope of
634 Interstate Commission employment, duties, or
635 responsibilities. The executive director and employees are
636 not protected from suit or liability for damage, loss, injury, or
637 liability caused by the intentional or willful and wanton
638 misconduct of such person.

639 (1) The liability of the Interstate Commission's executive
640 director and employees or Interstate Commission
641 representatives, acting within the scope of employment or
642 duties for acts, errors, or omissions occurring within his or
643 her state may not exceed the limits of liability set forth under
644 the constitution and laws of that state for state officials,
645 employees, and agents. The Interstate Commission is
646 considered to be an instrumentality of the states for the
647 purposes of any such action. This subsection does not protect

648 the executive director or employees from suit or liability for
649 damage, loss, injury, or liability caused by his or her
650 intentional or willful and wanton misconduct.

651 (2) The Interstate Commission shall defend the executive
652 director and its employees and, subject to the approval of the
653 Attorney General or other appropriate legal counsel of the
654 member state represented by an Interstate Commission
655 representative, shall defend such Interstate Commission
656 representative in any civil action seeking to impose liability
657 arising out of an actual or alleged act, error or omission that
658 occurred within the scope of Interstate Commission
659 employment, duties or responsibilities, or that the defendant
660 had a reasonable basis for believing occurred within the
661 scope of Interstate Commission employment, duties, or
662 responsibilities, provided that the actual or alleged act, error,
663 or omission did not result from intentional or willful and
664 wanton misconduct on the part of such person.

665 (3) To the extent not covered by the state involved,
666 member state, or the Interstate Commission, the
667 representatives or employees of the Interstate Commission
668 shall be held harmless in the amount of a settlement or
669 judgment, including attorney's fees and costs, obtained
670 against the individual arising out of an actual or alleged act,
671 error, or omission that occurred within the scope of Interstate
672 Commission employment, duties, or responsibilities, or that
673 the individual had a reasonable basis for believing occurred
674 within the scope of Interstate Commission employment,
675 duties, or responsibilities, provided that the actual or alleged
676 act, error, or omission did not result from intentional or
677 willful and wanton misconduct on the part of the individual.

678 ARTICLE XII. RULEMAKING FUNCTIONS
679 OF THE INTERSTATE COMMISSION

680 (a) *Rulemaking Authority* --

681 The Interstate Commission shall promulgate reasonable
682 rules in order to effectively and efficiently achieve the
683 purposes of this compact. Notwithstanding the foregoing, in
684 the event the Interstate Commission exercises its rulemaking
685 authority in a manner that is beyond the scope of the
686 purposes of this Act, or the powers granted hereunder, then
687 such an action by the Interstate Commission is invalid and
688 has no force nor effect.

689 (b) *Rulemaking Procedure* --

690 Rules shall be made pursuant to a rulemaking process
691 that substantially conforms to the “Model State
692 Administrative Procedure Act,” of 1981 Act, Uniform Laws
693 Annotated, Vol. 15, p.1 (2000) as amended, as may be
694 appropriate to the operations of the Interstate Commission.

695 (c) Not later than thirty days after a rule is promulgated,
696 any person may file a petition for judicial review of the rule.
697 Filing such a petition does not stay or otherwise prevent the
698 rule from becoming effective unless the court finds that the
699 petitioner has a substantial likelihood of success. The court
700 shall give deference to the actions of the Interstate
701 Commission consistent with applicable law and may not find
702 the rule to be unlawful if the rule represents a reasonable
703 exercise of the Interstate Commission’s authority.

704 (d) If a majority of the Legislatures of the compacting
705 states rejects a rule by enactment of a statute or resolution in
706 the same manner used to adopt the compact, then that rule
707 has no further force nor effect in any compacting state.

708 ARTICLE XIII. OVERSIGHT, ENFORCEMENT,
709 AND DISPUTE RESOLUTION

710 (a) *Oversight* --

711 (1) The executive, legislative and judicial branches of
712 state government in each member state shall enforce this
713 compact and shall take all actions necessary and appropriate
714 to effectuate the compact's purposes and intent. The
715 provisions of this compact and the rules promulgated
716 hereunder shall have standing as statutory law.

717 (2) All courts shall take judicial notice of this compact
718 and the rules in any judicial or administrative proceeding in
719 a member state pertaining to the subject matter of this
720 compact which may affect the powers, responsibilities or
721 actions of the Interstate Commission.

722 (3) The Interstate Commission is entitled to receive all
723 service of process in any such proceeding, and has standing
724 to intervene in the proceeding for all purposes. Failure to
725 provide service of process to the Interstate Commission
726 renders a judgment or order void as to the Interstate
727 Commission, this compact or promulgated rules.

728 (b) *Default, Technical Assistance, Suspension and*
729 *Termination --*

730 If the Interstate Commission determines that a member
731 state has defaulted in the performance of its obligations or
732 responsibilities under this compact, or the bylaws or
733 promulgated rules, the Interstate Commission shall:

734 (1) Provide written notice to the defaulting state and other
735 member states, of the nature of the default, the means of
736 curing the default and any action taken by the Interstate
737 Commission. The Interstate Commission shall specify the
738 conditions by which the defaulting state must cure its default;
739 and

740 (2) Provide remedial training and specific technical
741 assistance regarding the default.

742 (3) If the defaulting state fails to cure the default, the
743 defaulting state shall be terminated from the compact upon an
744 affirmative vote of a majority of the member states and all
745 rights, privileges and benefits conferred by this compact shall
746 be terminated from the effective date of termination. A cure
747 of the default does not relieve the offending state of
748 obligations or liabilities incurred during the period of the
749 default.

750 (4) Suspension or termination of membership in the
751 compact may be imposed only after all other means of
752 securing compliance have been exhausted. Notice of intent
753 to suspend or terminate shall be given by the Interstate
754 Commission to the Governor, the majority and minority
755 leaders of the defaulting state's Legislature, and each of the
756 member states.

757 (5) The state which has been suspended or terminated is
758 responsible for all assessments, obligations and liabilities
759 incurred through the effective date of suspension or
760 termination including obligations, the performance of which
761 extends beyond the effective date of suspension or
762 termination.

763 (6) The Interstate Commission does not bear any costs
764 relating to any state that has been found to be in default or
765 which has been suspended or terminated from the compact,
766 unless otherwise mutually agreed upon in writing between
767 the Interstate Commission and the defaulting state.

768 (7) The defaulting state may appeal the action of the
769 Interstate Commission by petitioning the U.S. District Court
770 for the District of Columbia or the federal district where the
771 Interstate Commission has its principal offices. The
772 prevailing party shall be awarded all costs of such litigation
773 including reasonable attorney's fees.

774 (c) *Dispute Resolution* --

775 (1) The Interstate Commission shall attempt, upon the
776 request of a member state, to resolve disputes which are
777 subject to the compact and which may arise among member
778 states and between member and nonmember states.

779 (2) The Interstate Commission shall promulgate a rule
780 providing for both mediation and binding dispute resolution
781 for disputes as appropriate.

782 (d) *Enforcement* --

783 (1) The Interstate Commission, in the reasonable exercise
784 of its discretion, shall enforce the provisions and rules of this
785 compact.

786 (2) The Interstate Commission may by majority vote of
787 the members initiate legal action in the United State District
788 Court for the District of Columbia or, at the discretion of the
789 Interstate Commission, in the federal district where the
790 Interstate Commission has its principal offices, to enforce
791 compliance with the provisions of the compact, its
792 promulgated rules and bylaws, against a member state in
793 default. The relief sought may include both injunctive relief
794 and damages. In the event judicial enforcement is necessary
795 the prevailing party shall be awarded all costs of such
796 litigation including reasonable attorney's fees.

797 (3) The remedies herein are not the exclusive remedies of
798 the Interstate Commission. The Interstate Commission may
799 avail itself of any other remedies available under state law or
800 the regulation of a profession.

801 ARTICLE XIV. FINANCING OF THE
802 INTERSTATE COMMISSION

803 (a) The Interstate Commission shall pay, or provide for
804 the payment of the reasonable expenses of its establishment,
805 organization and ongoing activities.

806 (b) The Interstate Commission may levy on and collect
807 an annual assessment from each member state to cover the
808 cost of the operations and activities of the Interstate
809 Commission and its staff which must be in a total amount
810 sufficient to cover the Interstate Commission's annual budget
811 as approved each year. The aggregate annual assessment
812 amount shall be allocated based upon a formula to be
813 determined by the Interstate Commission, which shall
814 promulgate a rule binding upon all member states.

815 (c) The Interstate Commission may not incur obligations
816 of any kind prior to securing the funds adequate to meet the
817 same; nor may the Interstate Commission pledge the credit of
818 any of the member states, except by and with the authority of
819 the member state.

820 (d) The Interstate Commission shall keep accurate
821 accounts of all receipts and disbursements. The receipts and
822 disbursements of the Interstate Commission are subject to the
823 audit and accounting procedures established under its bylaws.
824 However, all receipts and disbursements of funds handled by
825 the Interstate Commission shall be audited annually by a
826 certified or licensed public accountant and the report of the
827 audit shall be included in and become part of the annual
828 report of the Interstate Commission.

829 ARTICLE XV. MEMBER STATES, EFFECTIVE DATE
830 AND AMENDMENT

831 (a) Any state is eligible to become a member state.

832 (b) This compact became effective and binding upon
833 legislative enactment of the compact into law by ten states in
834 July 2008. It becomes effective and binding as to any other
835 member state upon enactment of the compact into law by that
836 state. The Governors of nonmember states or their designees
837 shall be invited to participate in the activities of the Interstate
838 Commission on a nonvoting basis prior to adoption of the
839 compact by all states.

840 (c) The Interstate Commission may propose amendments
841 to the compact for enactment by the member states. An
842 amendment does not become effective and binding upon the
843 Interstate Commission and the member states unless and until
844 it is enacted into law by unanimous consent of the member
845 states.

846 ARTICLE XVI. WITHDRAWAL AND DISSOLUTION

847 (a) *Withdrawal* --

848 (1) Once effective, the compact continues in force and
849 remains binding upon each member state. A member state
850 may withdraw from the compact upon repealing the specific
851 statute that enacted the compact into law.

852 (2) Withdrawal from the compact occurs by repeal of the
853 enacting statute, but withdrawal does not take effect until one
854 year after the effective date of the repealing legislation and
855 until written notice of the withdrawal has been given by the
856 withdrawing state to the Governor of each other member
857 state.

858 (3) The withdrawing state shall immediately notify the
859 chairperson of the Interstate Commission in writing upon the
860 introduction of any legislation to repeal this compact in the
861 withdrawing state. The Interstate Commission shall notify

862 the other member states of the withdrawing state's potential
863 to withdraw within sixty days of receiving notice.

864 (4) The withdrawing state is responsible for all
865 assessments, obligations and liabilities incurred through the
866 effective date of withdrawal, including obligations, the
867 performance of which extend beyond the effective date of
868 withdrawal.

869 (5) Reinstatement following withdrawal of a member
870 state shall occur if the withdrawing state reenacts the
871 compact or upon such later date as may be determined by the
872 Interstate Commission.

873 (b) *Dissolution of Compact* --

874 (1) This compact shall dissolve effective upon the date of
875 the withdrawal or default of any member state which reduces
876 the membership in the compact to one member state.

877 (2) Upon the dissolution of this compact, the compact
878 becomes null and void and is of no further force or effect,
879 and the business and affairs of the Interstate Commission
880 shall be concluded and surplus funds shall be distributed in
881 accordance with the bylaws.

882 ARTICLE XVII. SEVERABILITY AND
883 CONSTRUCTION

884 (a) The provisions of this compact are severable, and if
885 any phrase, clause, sentence or provision is deemed
886 unenforceable, the remaining provisions of the compact are
887 enforceable.

888 (b) The provisions of this compact shall be liberally
889 construed to effectuate its purposes.

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890 (c) Nothing in this compact prohibits the applicability of
891 any other interstate compact to which the states are members.

892 ARTICLE XVIII. BINDING EFFECT OF COMPACT
893 AND OTHER LAWS

894 (a) *Other Laws --*

895 (1) Nothing in this compact prevents the enforcement of
896 any other law of a member state that is not inconsistent with
897 this compact.

898 (2) All member states' laws conflicting with this compact
899 are superseded to the extent of the conflict.

900 (b) *Binding Effect of the Compact --*

901 (1) All lawful actions of the Interstate Commission,
902 including all rules and bylaws promulgated by the Interstate
903 Commission, are binding upon the member states.

904 (2) All agreements between the Interstate Commission
905 and the member states are binding in accordance with their
906 terms.

907 (3) In the event any provision of this compact exceeds the
908 constitutional limits imposed on the Legislature of any
909 member state, that provision is ineffective to the extent of the
910 conflict with the constitutional provision in question in that
911 member state.

CHAPTER 57

**(H. B. 2556 - By Delegates Perry, M. Poling,
Shaver, Lawrence, Stowers, Moye, Romine and Duke)**

[Passed February 22, 2011; in effect from passage.]
[Approved by the Governor on February 25, 2011.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to resetting the expiration date of provisions that allow the employment of retired teachers as substitutes beyond the post-retirement employment limit in certain circumstances; requiring certain additional information be included in the affidavit submitted to the Consolidated Public Retirement Board; requiring the affidavit be submitted to the State Board of Education; and requiring certain additional information be included in the report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.

1 (a) The county superintendent, subject to approval of the
2 county board, may employ and assign substitute teachers to
3 any of the following duties: (1) To fill the temporary absence
4 of any teacher or an unexpired school term made vacant by
5 resignation, death, suspension or dismissal; (2) to fill a
6 teaching position of a regular teacher on leave of absence;
7 and (3) to perform the instructional services of any teacher
8 who is authorized by law to be absent from class without loss
9 of pay, providing the absence is approved by the board of
10 education in accordance with the law. The substitute shall be
11 a duly certified teacher.

12 (b) Notwithstanding any other provision of this code to
13 the contrary, a substitute teacher who has been assigned as a
14 classroom teacher in the same classroom continuously for
15 more than one half of a grading period and whose assignment
16 remains in effect two weeks prior to the end of the grading
17 period, shall remain in the assignment until the grading
18 period has ended, unless the principal of the school certifies
19 that the regularly employed teacher has communicated with
20 and assisted the substitute with the preparation of lesson
21 plans and monitoring student progress or has been approved
22 to return to work by his or her physician. For the purposes of
23 this section, teacher and substitute teacher, in the singular or
24 plural, mean professional educator as defined in section one,
25 article one of this chapter.

26 (c)(1) The Legislature hereby finds and declares that due
27 to a shortage of qualified substitute teachers, a compelling
28 state interest exists in expanding the use of retired teachers to
29 provide service as substitute teachers in areas of critical need
30 and shortage. The Legislature further finds that diverse
31 circumstances exist among the counties for the expanded use
32 of retired teachers as substitutes. For the purposes of this
33 subsection, "area of critical need and shortage" means an area
34 of certification and training in which the number of available
35 substitute teachers in the county who hold certification and

36 training in that area and who are not retired is insufficient to
37 meet the projected need for substitute teachers.

38 (2) A person receiving retirement benefits under the
39 provisions of article seven-a, chapter eighteen of this code
40 or who is entitled to retirement benefits during the fiscal year
41 in which that person retired may accept employment as a
42 substitute teacher for an unlimited number of days each fiscal
43 year without affecting the monthly retirement benefit to
44 which the retirant is otherwise entitled if the following
45 conditions are satisfied:

46 (A) The county board adopts a policy recommended by
47 the superintendent to address areas of critical need and
48 shortage;

49 (B) The policy sets forth the areas of critical need and
50 shortage in the county in accordance with the definition of
51 area of critical need and shortage set forth in subdivision (1)
52 of this subsection;

53 (C) The policy provides for the employment of retired
54 teachers as substitute teachers during the school year on an
55 expanded basis in areas of critical need and shortage as
56 provided in this subsection;

57 (D) The policy provides that a retired teacher may be
58 employed as a substitute teacher in an area of critical need
59 and shortage on an expanded basis as provided in this
60 subsection only when no other teacher who holds
61 certification and training in the area and who is not retired is
62 available and accepts the substitute assignment;

63 (E) The policy is effective for one school year only and
64 is subject to annual renewal by the county board;

65 (F) The state board approves the policy and the use of
66 retired teachers as substitute teachers on an expanded basis
67 in areas of critical need and shortage as provided in this
68 subsection; and

69 (G) Prior to employment of a substitute teacher beyond
70 the post-retirement employment limitations established by the
71 Consolidated Public Retirement Board, the superintendent of
72 the affected county submits to the Consolidated Public
73 Retirement Board and the state board, in a form approved by
74 the retirement board, an affidavit signed by the
75 superintendent stating the name of the county, the fact that
76 the county has adopted a policy to employ retired teachers as
77 substitutes to address areas of critical need and shortage, the
78 name or names of the person or persons to be employed
79 pursuant to the policy, the critical need and shortage area
80 position filled by each person, the date that the person gave
81 notice to the county board of the person's intent to retire, and
82 the effective date of the person's retirement.

83 (3) Any person who retires and begins work as a
84 substitute teacher within the same employment term shall
85 lose those retirement benefits attributed to the annuity
86 reserve, effective from the first day of employment as a
87 retiree substitute in that employment term and ending with
88 the month following the date the retiree ceases to perform
89 service as a substitute.

90 (4) Retired teachers employed to perform expanded
91 substitute service pursuant to this subsection are considered
92 day-to-day, temporary, part-time employees. The substitutes
93 are not eligible for additional pension or other benefits paid
94 to regularly employed employees and shall not accrue
95 seniority.

96 (5) When a retired teacher is employed as a substitute to
97 fill a vacant position, the county board shall continue to post

98 the vacant position until it is filled with a regularly employed
99 teacher.

100 (6) Until this subsection is expired pursuant to
101 subdivision (7) of this subsection, the state board, annually,
102 shall report to the Joint Committee on Government and
103 Finance prior to February 1 of each year. Additionally, a
104 copy shall be provided to the Legislative Oversight
105 Commission on Education Accountability. The report shall
106 contain information indicating the effectiveness of the
107 provisions of this subsection on expanding the use of retired
108 substitute teachers to address areas of critical need and
109 shortage including, but not limited to, the number of retired
110 teachers, by critical need and shortage area position filled
111 and by county, employed beyond the post-retirement
112 employment limit established by the Consolidated Public
113 Retirement Board, the date that each person gave notice to
114 the county board of the person's intent to retire, and the
115 effective date of the person's retirement.

116 (7) The provisions of this subsection shall expire on June
117 30, 2014.

118 (d) (1) Notwithstanding any other provision of this code
119 to the contrary, each year a county superintendent may
120 employ prospective employable professional personnel on a
121 reserve list at the county level subject to the following
122 conditions:

123 (A) The county board adopts a policy to address areas of
124 critical need and shortage as identified by the state board.
125 The policy shall include authorization to employ prospective
126 employable professional personnel;

127 (B) The county board posts a notice of the areas of
128 critical need and shortage in the county in a conspicuous
129 place in each school for at least ten working days; and

130 (C) There are not any potentially qualified applicants
131 available and willing to fill the position.

132 (2) Prospective employable professional personnel may
133 only be employed from candidates at a job fair who have or
134 will graduate from college in the current school year or
135 whose employment contract with a county board has or will
136 be terminated due to a reduction in force in the current fiscal
137 year.

138 (3) Prospective employable professional personnel
139 employed are limited to three full-time prospective
140 employable professional personnel per one hundred
141 professional personnel employed in a county or twenty-five
142 full-time prospective employable professional personnel in a
143 county, whichever is less.

144 (4) Prospective employable professional personnel shall
145 be granted benefits at a cost to the county board and as a
146 condition of the employment contract as approved by the
147 county board.

148 (5) Regular employment status for prospective
149 employable professional personnel may be obtained only in
150 accordance with the provisions of section seven-a, article
151 four of this chapter.

152 (e) The state board annually shall review the status of
153 employing personnel under the provisions of subsection (d)
154 of this section and annually shall report to the Legislative
155 Oversight Commission on Education Accountability on or
156 before November 1 of each year. The report shall include,
157 but not be limited to, the following:

158 (A) The counties that participated in the program;

159 (B) The number of personnel hired;

- 160 (C) The teaching fields in which personnel were hired;
- 161 (D) The venue from which personnel were employed;
- 162 (E) The place of residency of the individual hired; and
- 163 (F) The state board's recommendations on the
- 164 prospective employable professional personnel program.



CHAPTER 58

**(Com. Sub. for S. B. 391 - By Senators Palumbo,
Snyder, Foster, McCabe, Beach, Minard and Wells)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §3-3-2a of the Code of West Virginia, 1931, as amended, relating to authorizing community voting locations; removing the requirement that chairpersons of executive committees approve community voting locations; requiring community voting locations to be open a minimum of five days; providing for locations on a rotating basis; establishing criteria for community voting locations; permitting chairpersons of executive committees to nominate locations; requiring publication of notices prior to the designation of locations; requiring publication of notices of the dates, times and places of community voting locations; and requiring community voting locations to be utilized an equal number of days and for the same number of hours.

Be it enacted by the Legislature of West Virginia:

That §3-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

1 (a) The county commission shall designate the
2 courthouse or annex to the courthouse as the primary location
3 for early voting and in addition, the commission may
4 designate other locations as provided in subsection (b).

5 (b) The county commission may, with the approval of the
6 county clerk or other official charged with the administration
7 of elections, designate community voting locations for early
8 voting, other than the county courthouse or courthouse annex
9 by a majority of the members of the county commission
10 voting to adopt the same at a public meeting called for that
11 purpose.

12 (1) The county commission shall publish a notice of its
13 intent to designate community voting location at least thirty
14 days prior to the designation. Notice shall be by publication
15 as a Class II-0 legal advertisement in compliance with
16 provisions of article three, chapter fifty-nine of this code.
17 The publication area is the county in which the community
18 voting locations are designated;

19 (2) Community voting locations shall comply with
20 requirements of this article for early in-person voting, criteria
21 prescribed by the Secretary of State and the following
22 criteria:

23 (A) Can be scheduled for use during the early voting
24 period;

25 (B) Has the physical facilities necessary to accommodate
26 early voting requirements;

27 (C) Has adequate space for voting equipment, poll
28 workers, and voters; and

29 (D) Has adequate security, public accessibility, and
30 parking.

31 (3) The county executive committees of the two major
32 political parties may nominate sites to be used as community
33 voting locations during the early voting period;

34 (4) Upon the designation of a community voting location,
35 the county clerk shall, not less than thirty days prior to an
36 election, give notice of the dates, times, and place of
37 community voting locations by publication as a Class II-0
38 legal advertisement in compliance with provisions of article
39 three, chapter fifty-nine of this code;

40 (5) Voting shall be conducted at each designated
41 community voting site for a period of not less than five
42 consecutive days during early in-person voting authorized by
43 section three of this article, but need not be conducted at each
44 location for the entire period of early in-person voting;

45 (6) The county commission, with the approval of the
46 county clerk, may authorize community voting locations on
47 a rotating basis, wherein a community voting location may be
48 utilized for less than the full period of early in-person voting;
49 and

50 (7) If more than one community voting location is
51 designated, each location shall be utilized for an equal
52 number of voting days and permit voting for the same
53 number of hours per day.

54 (c) The Secretary of State shall propose legislative and
55 emergency rules in accordance with the provisions of article
56 three, chapter twenty-nine-a of this code as may be necessary
57 to implement the provisions of this section. The rules shall
58 include establishment of criteria to assure neutrality and
59 security in the selection of community voting locations.

60 (d) Throughout the period of early in-person voting, the
61 official designated to supervise and conduct absentee voting
62 shall make the following provisions for voting:

63 (1) The official shall provide a sufficient number of
64 voting booths or devices appropriate to the voting system at
65 which voters may prepare their ballots. The booths or
66 devices are to be in an area separate from but within clear
67 view of the public entrance area of the official's office or
68 other area designated by the county commission for absentee
69 voting and are to be arranged to ensure the voter complete
70 privacy in casting the ballot.

71 (2) The official shall make the voting area secure from
72 interference with the voter and shall ensure that voted and
73 unvoted ballots are at all times secure from tampering. No
74 person, other than a person lawfully assisting the voter
75 according to the provisions of this chapter, may be permitted
76 to come within five feet of the voting booth while the voter
77 is voting. No person, other than the officials or employees of
78 the official designated to supervise and conduct absentee
79 voting or members of the board of ballot commissioners
80 assigned to conduct absentee voting, may enter the area or
81 room set aside for voting.

82 (3) The official designated to supervise and conduct
83 absentee voting shall request the county commission
84 designate another area within the county courthouse, any
85 annex of the courthouse or any other designated as early in-
86 person voting locations within the county, as a portion of the

87 official's office, for the purpose of absentee in-person voting
88 in the following circumstances:

89 (A) If the voting area is not accessible to voters with
90 physical disabilities;

91 (B) If the voting area is not within clear view of the
92 public entrance of the office of the official designated to
93 supervise and conduct absentee voting; or

94 (C) If there is no suitable area for absentee in-person
95 voting within the office.

96 Any designated area is subject to the same requirements
97 as the regular absentee voting area.

98 (4) The official designated to supervise and conduct
99 absentee voting shall have at least two representatives to
100 assist with absentee voting: *Provided*, That the two
101 representatives may not be registered with the same political
102 party affiliation or two persons registered with no political
103 party affiliation. The representatives may be full-time
104 employees, temporary employees hired for the period of
105 absentee voting in person or volunteers.

106 (5) No person may do any electioneering nor may any
107 person display or distribute in any manner, or authorize the
108 display or distribution of, any literature, posters or material
109 of any kind which tends to influence the voting for or against
110 any candidate or any public question on the property of the
111 county courthouse, any annex facilities, or any other
112 designated early voting locations within the county, during
113 the entire period of regular in-person absentee voting. The
114 official designated to supervise and conduct absentee voting
115 is authorized to remove the material and to direct the sheriff
116 of the county to enforce the prohibition.

CHAPTER 59

(S. B. 581 - By Senators Unger and K. Facemyer)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §3-3-3 of the Code of West Virginia, 1931, as amended, relating to reducing the days for early voting in person; and allowing Saturday early voting in all elections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-3. Early voting in person.

1 (a) The voting period for early in-person voting is to be
2 conducted during regular business hours beginning on the
3 thirteenth day before the election and continuing through the
4 third day before the election. Additionally, early in-person
5 voting is to be available from 9:00 a.m. to 5:00 p.m. on
6 Saturdays during the early voting period.

7 (b) Any person desiring to vote during the period of early
8 in-person voting shall, upon entering the election room,
9 clearly state his or her name and residence to the official or

10 representative designated to supervise and conduct absentee
11 voting. If that person is found to be duly registered as a voter
12 in the precinct of his or her residence, he or she is required to
13 sign his or her name in the space marked "signature of voter"
14 on the pollbook. If the voter is unable to sign his or her name
15 due to illiteracy or physical disability, the person assisting the
16 voter and witnessing the mark of the voter shall sign his or
17 her name in the space provided. No ballot may be given to
18 the person until he or she signs his or her name on the
19 pollbook.

20 (c) When the voter's signature or mark is properly on the
21 pollbook, two qualified representatives of the official
22 designated to supervise and conduct absentee voting shall
23 sign their names in the places indicated on the back of the
24 official ballot.

25 (d) If the official designated to supervise and conduct
26 absentee voting determines that the voter is not properly
27 registered in the precinct where he or she resides, the clerk or
28 his or her representative shall challenge the voter's absentee
29 ballot as provided in this article.

30 (e) The official designated to supervise and conduct
31 absentee voting shall provide each person voting an absentee
32 ballot in person the following items to be printed as
33 prescribed by the Secretary of State:

34 (1) In counties using paper ballots, one of each type of
35 official absentee ballot the voter is eligible to vote, prepared
36 according to law;

37 (2) In counties using punch card systems, one of each
38 type of official absentee ballot the voter is eligible to vote,
39 prepared according to law, and a gray secrecy envelope;

40 (3) In counties using optical scan systems, one of each
41 type of official absentee ballot the voter is eligible to vote,
42 prepared according to law, and a secrecy sleeve; or

43 (4) For direct recording election systems, access to the
44 voting equipment in the voting booth.

45 (f) The voter shall enter the voting booth alone and there
46 mark the ballot: *Provided*, That the voter may have assistance
47 in voting according to the provisions of section four of this
48 article. After the voter has voted the ballot or ballots, the
49 absentee voter shall: Place the ballot or ballots in the gray
50 secrecy envelope and return the ballot or ballots to the
51 official designated to supervise and conduct the absentee
52 voting: *Provided, however*, That in direct recording election
53 systems, once the voter has cast his or her ballot, the voter
54 shall exit the polling place.

55 (g) Upon receipt of the voted ballot, representatives of the
56 official designated to supervise and conduct the absentee
57 voting shall:

58 (1) Remove the ballot stub;

59 (2) Place punch card ballots and paper ballots into one
60 envelope which shall not have any marks except the precinct
61 number and seal the envelope; and

62 (3) Place ballots for all voting systems into a ballot box
63 that is secured by two locks with a key to one lock kept by
64 the president of the county commission and a key to the other
65 lock kept by the county clerk.

CHAPTER 60

**(Com. Sub. for S. B. 495 - By Senators
Palumbo and Plymale)**

[Passed March 11, 2011; in effect from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to repeal §3-4A-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27, all relating generally to the use of electronic voting systems; defining terms; setting forth the requirements of electronic voting systems; requiring public meetings held on adopting electronic voting be held at least six months prior to the next election; providing that if an electronic voting system is terminated, it must be replaced by an electronic voting system that complies with federal law; deleting the requirement that the purchase or lease of vote-recording devices must be paid in cash; deleting outmoded terms and voting systems no longer being used; updating technical terminology; requiring at least two vote-recording devices be provided at each precinct in a primary election; and providing that independent voters may vote in primaries as otherwise provided in code.

Be it enacted by the Legislature of West Virginia:

That §3-4A-13a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27 of said code be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**§3-4A-2. Definitions.**

1 As used in this article, unless otherwise specified:

2 (1) “Automatic tabulating equipment” means all
3 apparatus necessary to electronically count votes recorded on
4 ballots and tabulate the results;

5 (2) “Ballot” means an electronic image or paper on which
6 votes may be recorded by means of perforating or marking
7 with electronically sensible ink or pencil or a screen upon
8 which votes may be recorded by means of a stylus or by
9 means of touch;

10 (3) “Central counting center” means a facility equipped
11 with suitable and necessary automatic tabulating equipment,
12 selected by the county commission, for the electronic
13 counting of votes recorded on ballots;

14 (4) “Electronic poll book” means an electronic device
15 containing the same voter registration information maintained
16 by the county clerk in a printed poll book.

17 (5) “Electronic voting system” is a means of conducting
18 an election whereby votes are recorded on ballots by means
19 of an electronically sensible marking ink, by perforating or
20 are recorded on equipment that registers votes on a computer
21 disk, or by touching a screen with a stylus or by means of
22 touch, and votes are subsequently counted by automatic
23 tabulating equipment at the central counting center;

24 (6) “Standard validation test deck” means a group of
25 ballots wherein all voting possibilities which can occur in an
26 election are represented; and

27 (7) “Vote-recording device” means equipment in which
28 ballots are placed to allow a voter to record his or her vote by
29 electronically sensible ink, or pencil, or a screen upon which
30 votes may be recorded by means of a stylus or by means of
31 touch.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system that has been approved in
2 accordance with section eight of this article may be adopted
3 for use in general, primary and special elections in any
4 county by the following procedure and not otherwise:

5 By a majority of the members of the county commission
6 voting to adopt the same at a public meeting regularly called
7 for that purpose: *Provided*, That the meeting be held not less
8 than six months prior to the next scheduled primary or
9 general election, with notice published as a Class II-0 legal
10 advertisement in compliance with the provisions of article
11 three, chapter fifty-nine of this code. The publication area for
12 such publication shall be the county involved.

§3-4A-4. Procedure for terminating use of electronic voting systems.

1 The use of an electronic voting system may be
2 terminated:

3 (1) By a majority of the members of the county
4 commission voting to terminate use of the system and replace
5 it with a different voting system meeting the requirements of
6 the Help America Vote Act of 2002, 42 U.S.C. §15301, *et*
7 *seq.* at a special public meeting called for the purpose of said
8 termination, with due notice thereof published as a Class II-0
9 legal advertisement in compliance with the provisions of
10 article three, chapter fifty-nine of this code, and the
11 publication area for such publication shall be the county

12 involved: *Provided*, That such meeting shall be held not less
13 than six months prior to a general election or six months prior
14 to a primary election. If at such meeting, such county
15 commission shall enter an order of its intention to terminate
16 use of an electronic voting system, it shall thereafter
17 forthwith cause to be published a certified copy of such order
18 as a Class II-0 legal advertisement in compliance with the
19 provisions of article three, chapter fifty-nine of this code, and
20 the publication area for such publication shall be the county
21 involved. The first publication of such order shall not be less
22 than twenty days after the entry of such order. Such county
23 commission shall not terminate the use of an electronic
24 voting system until ninety days after the entry of such order
25 of its intention to terminate the same. Promptly after the
26 expiration of ninety days after the entry of such order of
27 intention to terminate the use of an electronic voting system,
28 if no petition has theretofore been filed with such county
29 commission requesting a referendum on the question of
30 termination of the electronic voting system as hereinafter
31 provided, such county commission shall enter a final order
32 terminating the use of the electronic voting system, and the
33 use of electronic voting system shall thereby be terminated.
34 If a petition has been submitted as provided in this
35 subdivision, the county commission shall not terminate the
36 use of the system but shall proceed as provided in this
37 subdivision.

38 If five percent or more of the registered voters of such
39 county shall sign a petition requesting that the use of an
40 electronic voting system be terminated in such county and
41 such petition be filed with the county commission of such
42 county within ninety days after the entry of such order of
43 intention to terminate the use of an electronic voting system,
44 such county commission shall submit to the voters of such
45 county at the next general or primary election, whichever
46 shall first occur, the question: "Shall the use of an electronic
47 voting system be terminated in County?" If this

48 question be answered in the affirmative by a majority of the
 49 voters in such election upon the question, the use of an
 50 electronic voting system shall thereby be terminated. If such
 51 question shall not be answered in the affirmative by such
 52 majority, the use of an electronic voting system shall
 53 continue.

54 (2) By the affirmative vote of a majority of the voters of
 55 such county voting upon the question of termination of the
 56 use of an electronic voting system in such county. If five
 57 percent or more of the registered voters of such county shall
 58 sign a petition requesting the termination of the use of an
 59 electronic voting system in such county, and such petition be
 60 filed with the county commission of such county, such
 61 county commission shall submit to the voters of such county
 62 at the next general or primary election, following by not less
 63 than ninety days the date of the filing of such petition, the
 64 question: "Shall the use of an electronic voting system be
 65 terminated in County?" If this question be
 66 answered in the affirmative by a majority of the voters of
 67 such county voting upon the question, the use of an electronic
 68 voting system shall thereby be terminated. If such question
 69 shall not be answered in the affirmative by a majority of the
 70 voters of such county voting upon the question, the use of an
 71 electronic voting system shall thereby continue.

**§3-4A-6. Acquisition of vote recording devices by purchase or
 lease; acquisition of use of automatic tabulating
 equipment; counting centers.**

1 (a) A county commission may acquire vote recording
 2 devices by any one or any combination of the following
 3 methods:

4 (1) By purchasing the same and paying the purchase price
 5 from funds available from the maximum general levy or from
 6 any other lawful source; and

7 (2) By leasing the same under written contract of lease
8 and paying the rentals from funds available from the
9 maximum general levy or any other lawful source.

10 (b) A county commission may acquire the use of
11 automatic tabulating equipment by leasing or renting the
12 same under written contract of lease or rental and paying the
13 rentals therefor from funds available from the maximum
14 general levy or other lawful source.

15 (c) A county commission may enter into an agreement
16 with another county commission to share automatic
17 tabulating equipment if the automatic tabulating equipment
18 may be transported to the appropriate central counting
19 centers. No ballots may be transported for counting in any
20 county other than the county in which the votes were cast.

21 (d) A county commission is authorized to accept as a gift
22 the use of suitable automatic tabulating equipment.

23 (e) The county commission may also secure a counting
24 center.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and
2 design may not be approved by the State Election
3 Commission or be purchased, leased or used by any county
4 commission unless it meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting or, at the voter's election, provides for open voting;

7 (2) It is constructed to ensure that, except in instances of
8 open voting as provided in this section, the contents of a
9 marked ballot may not be seen or known by anyone other
10 than the voter who has voted or is voting;

11 (3) It permits each voter to vote at any election for all
12 persons and offices for whom and which he or she is lawfully
13 entitled to vote, whether or not the name of any person
14 appears on a ballot as a candidate; and it permits each voter
15 to vote for as many persons for an office as he or she is
16 lawfully entitled to vote for; and to vote for or against any
17 question upon which he or she is lawfully entitled to vote.
18 The automatic tabulating equipment used in electronic voting
19 systems is to reject choices recorded on any ballot if the
20 number of choices exceeds the number to which a voter is
21 entitled;

22 (4) It permits each voter to write in the names of persons
23 for whom he or she desires to vote whose names do not
24 appear upon the ballots;

25 (5) It permits each voter to change his or her vote for any
26 candidate and upon any question appearing upon the ballots
27 or ballot labels up to the time when his or her ballot is
28 deposited in the ballot box or his or her ballot is cast by
29 electronic means;

30 (6) It contains programming media containing
31 sequentially numbered program instructions and coded or
32 otherwise protected from tampering or substitution of the
33 media or program instructions by unauthorized persons and
34 capable of tabulating all votes cast in each election;

35 (7) It contains two standard validation test decks
36 approved as to form and testing capabilities by the State
37 Election Commission;

38 (8) It correctly records and counts accurately all votes
39 cast for each candidate and for and against each question
40 appearing upon the ballots;

41 (9) It permits each voter at any election, other than a
42 primary election, to vote a straight party ticket, as provided
43 in section five, article six of this chapter, by one mark or
44 punch;

45 (10) It permits a voter in a primary election to: (A) vote
46 only for the candidates of the party for which the voter is
47 legally permitted to vote; (B) vote for the candidates, if any,
48 for nonpartisan nominations or election; and (C) vote on
49 public questions; and precludes the voter from voting for any
50 candidate seeking nomination by any other political party
51 unless that political party has determined that the voter may
52 participate in its primary election;

53 (11) It, where applicable, is provided with means for
54 sealing or electronically securing the vote recording device
55 to prevent its use and to prevent tampering with the device,
56 both before the polls are open or before the operation of the
57 vote recording device for an election is begun and
58 immediately after the polls are closed or after the operation
59 of the vote recording device for an election is completed;

60 (12) It has the capacity to contain the names of candidates
61 constituting the tickets of at least nine political parties and
62 accommodates the wording of at least fifteen questions;

63 (13) (A) Direct recording electronic voting machines
64 must generate a paper copy of each voter's vote that will be
65 automatically kept within a storage container, that is locked,
66 closely attached to the direct recording electronic voting
67 machine, and inaccessible to all but authorized voting
68 officials, who will handle such storage containers and such
69 paper copies contained therein in accordance with section
70 nineteen of this article.

71 (B) The paper copy of the voter's vote shall be generated
72 at the time the voter is at the voting station using the direct
73 recording electronic voting machine.

74 (C) The voter may examine the paper copy visually or
75 through headphone readout, and may accept or reject the
76 printed copy.

77 (D) The voter may not touch, handle or manipulate the
78 printed copy manually in any way.

79 (E) Once the printed copy of the voter's votes is accepted
80 by the voter as correctly reflecting the voter's intent, but not
81 before, it will automatically be stored for recounts or random
82 checks and the electronic vote will be cast within the
83 computer mechanism of the direct recording electronic voting
84 machine.

85 (F) Direct recording electronic voting machines with a
86 mandatory paper copy shall be approved by the Secretary of
87 State. The Secretary of State may promulgate rules and
88 emergency rules to implement or enforce this subsection
89 pursuant to the provisions of section five, article three,
90 chapter twenty-nine-a of this code.

91 (14) Where vote recording devices are used, they shall:

92 (A) Be durably constructed of material of good quality
93 and in a workmanlike manner and in a form which makes it
94 safely transportable;

95 (B) Bear a number that will identify it or distinguish it
96 from any other machine;

97 (C) Be constructed to ensure that a voter may easily learn
98 the method of operating it and may expeditiously cast his or
99 her vote for all candidates of his or her choice and upon any
100 public question;

101 (D) Be accompanied by a mechanically or electronically
102 operated instruction model which shows the arrangement of
103 the ballot, party columns or rows, and questions;

104 (15) For electronic voting systems that utilize a screen
105 upon which votes may be recorded by means of a stylus or by
106 means of touch:

107 (A) Be constructed to provide for the direct electronic
108 recording and tabulating of votes cast in a system specifically
109 designed and engineered for the election application;

110 (B) Be constructed to prevent any voter from voting for
111 more than the allowable number of candidates for any office,
112 to include an audible or visual signal, or both, warning any
113 voter who attempts to vote for more than the allowable
114 number of candidates for any office or who attempts to cast
115 his or her ballot prior to its completion and are constructed to
116 include a visual or audible confirmation, or both, to the voter
117 upon completion and casting of the ballot;

118 (C) Be constructed to present the entire ballot to the
119 voter, in a series of sequential pages, and to ensure that the
120 voter sees all of the ballot options on all pages before
121 completing his or her vote and to allow the voter to review
122 and change all ballot choices prior to completing and casting
123 his or her ballot;

124 (D) Be constructed to allow election commissioners to
125 spoil a ballot where a voter fails to properly cast his or her
126 ballot, has departed the polling place and cannot be recalled
127 by a poll clerk to complete his or her ballot;

128 (E) Be constructed to allow election commissioners, poll
129 clerks, or both, to designate, mark or otherwise record
130 provisional ballots;

131 (F) Consist of devices which are independent,
132 nonnetworked voting systems in which each vote is recorded
133 and retained within each device's internal nonvolatile
134 electronic memory and contain an internal security, the
135 absence of which prevents substitution of any other device;

136 (G) Store each vote in no fewer than three separate,
137 independent, nonvolatile electronic memory components and
138 that each device contains comprehensive diagnostics to
139 ensure that failures do not go undetected;

140 (H) Contain a unique, embedded internal serial number
141 for auditing purposes for each device used to activate, retain
142 and record votes;

143 (I) Be constructed to record all preelection, election and
144 post-election activities, including all ballot images and
145 system anomalies, in each device's internal electronic
146 memory and are to be accessible in electronic or printed
147 form;

148 (J) Be constructed with a battery backup system in each
149 device to, at a minimum, prevent the loss of any votes, as
150 well as all preelection, election and post-election activities,
151 including all ballot images and system anomalies, stored in
152 the device's internal electronic memory and to allow voting
153 to continue for two hours of uninterrupted operation in case
154 of an electrical power failure; and

155 (K) Be constructed to prevent the loss of any votes, as
156 well as all preelection, election and post-election activities,
157 including all ballot images and system anomalies, stored in
158 each device's internal electronic memory even in case of an
159 electrical and battery power failure.

**§3-4A-9a. Authorization for ballot-marking voting systems;
minimum requirements.**

1 (a) For purposes of this section, "ballot-marking
2 accessible voting system" means a device which allows
3 voters, including voters with disabilities, to mark an optical
4 scanning or mark-sensing voting system ballot, privately and
5 independently. The ballot-marking device is capable of

6 marking voter selections on an optically readable or
7 mark-sensing ballot which shall be subsequently read and
8 tallied on state certified optically readable or mark-sensing
9 ballot tabulating and reporting systems. Counties are hereby
10 permitted to obtain and employ ballot-marking accessible
11 voting systems that are approved by the State Election
12 Commission.

13 (b) The ballot-marking accessible voting device shall be
14 a completely integrated ballot-marking device that is
15 designed to allow voters to either view ballot choices through
16 a high resolution visual display or listen to ballot choices
17 with headphones and then enter ballot selections directly
18 through specially designed, integrated accessibility devices.

19 (c) Ballot-marking accessible voting systems may be
20 used for the purpose of marking or scanning optically
21 readable or mark-sensing ballots cast in all general, special
22 and primary elections and shall meet the following specific
23 requirements:

24 (1) The ballot-marking accessible voting system, system
25 firmware and programming software must be certified by an
26 independent testing authority, according to current federal
27 voting system standards and be approved by the State
28 Election Commission prior to entering into any contract.

29 (2) The ballot-marking accessible voting system shall,
30 additionally:

31 (A) Alert the voter if the voter has made more ballot
32 selections than the law allows for an individual office or
33 ballot issue;

34 (B) Alert the voter if the voter has made fewer ballot
35 selections than the law allows for an individual office or
36 ballot issue;

37 (C) Allow the voter to independently review all ballot
38 choices and make any corrections, before the ballot is
39 marked;

40 (D) Provide the voter with the opportunity to make a
41 write-in ballot choice, where allowed by state law;

42 (E) Allow voters with disabilities to mark their ballots, in
43 complete independence, and in conformity with both federal
44 and state law concerning mandatory accessibility for disabled
45 persons;

46 (F) Allow blind or visually impaired voters to vote in
47 complete privacy;

48 (G) Provide voters with an opportunity to change ballot
49 selections, or correct errors, before the ballot is marked for
50 voting, including the opportunity to correct the error through
51 the issuance of a replacement ballot if the voter was
52 otherwise unable to change the ballot or correct the error;

53 (H) Provide voters with the ability to view all ballot
54 selections through a high resolution visual display or to have
55 all ballot selections read to the voter through headphones;

56 (I) Ensure complete ballot privacy, while employing the
57 ballot-marking audio system and providing the voter with the
58 option to turn off the visual ballot display;

59 (J) Include a completely integrated voter input keypad,
60 using commonly accepted voter accessibility keys with
61 Braille markings;

62 (K) Include the ability for a voter to employ a sip/puff
63 device to enter ballot choices;

64 (L) Allow the voter to magnify all ballot choices and to
65 adjust both the volume of the audio feature and the speed of
66 ballot presentation;

67 (M) Allow the voter to employ his or her own headset as
68 well as the headset provided with the ballot-marking device
69 while being equipped with multiple output connections to
70 accommodate different headsets;

71 (N) Have multiple-language capability; and

72 (O) Allow the voter to verify that:

73 (i) An optical scan ballot inserted into the device at the
74 start of voting is blank; and

75 (ii) The voted optical scan ballot that is produced by the
76 device is voted as the voter intended.

77 (d) The Secretary of State is hereby directed to propose
78 rules and emergency rules for legislative approval in
79 accordance with the provisions of article three, chapter
80 twenty-nine-a of this code designed to ensure that any system
81 employed by a county under the provisions of this section is
82 publicly tested prior to use in election.

**§3-4A-9b. Authorization for precinct ballot-scanning device;
minimum requirements.**

1 (a) For purposes of this section, “precinct ballot-scanning
2 device” means a device used by the voter at the precinct on
3 election day or during early voting for the purpose of
4 scanning the voter’s ballot after the ballot has been voted but
5 prior to depositing the ballot into the ballot box.

6 (b) The precinct ballot-scanning device may be used for
7 the purpose of scanning optically readable ballots cast in all
8 primary, general and special elections.

9 (c) The precinct ballot-scanning device, firmware and
10 programming software must be certified by an independent
11 testing authority, according to current federal standards and
12 be approved by the State Election Commission. No election
13 official may enter into any contract to purchase, rent, lease or
14 otherwise acquire any precinct ballot-scanning device,
15 firmware or software not approved by the State Election
16 Commission.

17 (d) The precinct ballot-scanning device shall additionally:

18 (1) Alert the voter if the voter has made more ballot
19 selections than the law allows for an individual office or
20 ballot issue;

21 (2) Alert the voter if the voter has made fewer ballot
22 selections than the law allows for an individual office or
23 ballot issue; and

24 (3) Allow voters an opportunity to change ballot
25 selections, or correct errors, including the opportunity to
26 correct the error through the issuance of a replacement ballot
27 if the voter was otherwise unable to change the ballot or
28 correct the error.

29 (e) The precinct ballot-scanning device may be used for
30 tabulating election results only under the following
31 conditions:

32 (1) The county has at least one precinct ballot-scanning
33 device in each precinct;

34 (2) No tabulation of results is done at the precinct;

35 (3) The “tabulation memory device” may be removed
36 from the ballot-scanning device only after the polls close and
37 the votes may only be counted at the central counting center
38 on the night of the election; and

39 (4) All voters at the precinct are required to use the ballot
40 scanning device as a condition of completing their vote.

41 (f) If the optical scan ballots from each of the precincts
42 are counted at the central counting center on election night in
43 accordance with section twenty-seven of this article, and the
44 results from that count are the results finally published on
45 election night, then any county meeting each of the
46 requirements in paragraphs (1) through (4) of subsection (e),
47 may turn off the over vote switch on the central counting
48 device since every ballot will have been evaluated for over
49 votes by the precinct scanning device.

50 (g) The Secretary of State is hereby directed to propose
51 rules and emergency rules for legislative approval in
52 accordance with the provisions of article three, chapter
53 twenty-nine-a of this code in accordance with the provisions
54 of this section.

**§3-4A-10. County clerk to be custodian of vote-recording
devices, tabulating equipment and electronic poll
books; duties.**

1 (a) When an electronic voting system is acquired by any
2 county commission, the vote-recording devices, where
3 applicable, and the tabulating equipment shall be
4 immediately placed in the custody of the county clerk and
5 shall remain in his or her custody at all times except when in
6 use at an election or when in custody of a court or court
7 officers during contest proceedings. The clerk shall see that
8 the vote-recording devices and the tabulating equipment are

9 properly protected and preserved from damage or
10 unnecessary deterioration and shall not permit any
11 unauthorized person to tamper with them. The clerk shall
12 also keep the vote-recording devices and tabulating
13 equipment in repair and prepare the same for voting.

14 (b) When a county commission elects to acquire and use
15 electronic poll books in lieu of printed poll books, the clerk
16 of the county commission shall immediately take custody of
17 the electronic poll books, which shall remain in his or her
18 custody at all times except when in use at an election or when
19 in the custody of a court or court officers during contest
20 proceedings. The clerk shall ensure that the electronic poll
21 books are properly protected and preserved from damage or
22 unnecessary deteriorations and the clerk shall not permit any
23 unauthorized person to tamper with the electronic poll books.
24 The clerk shall also keep the electronic poll books in good
25 repair and the clerk shall prepare the electronic poll books for
26 election day.

§3-4A-10a. Proportional distribution of vote-recording devices.

1 Where vote-recording devices are used, the county
2 commission of each county shall, upon the close of
3 registration, review the total number of active registered
4 voters and the number of registered voters of each party in
5 each precinct. Prior to each election, the commission shall
6 determine the number of voting devices needed to
7 accommodate voters without long delays and shall assign an
8 appropriate number to each precinct. For the purposes of the
9 primary election, the commission shall assign the number of
10 vote recording devices in each precinct to be prepared for
11 each party based as nearly as practicable on the proportion of
12 registered voters of each party to the total: *Provided*, That a
13 minimum of two vote-recording devices be provided.

§3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.

1 (a) When the clerk of the county commission has
2 completed the preparation of the ballots and of any electronic
3 poll books and vote-recording devices as provided in sections
4 eleven-a and twelve-a of this article and as provided in
5 section twenty-one, article one of this chapter, and not later
6 than seven days before the day of the election, he or she shall
7 notify the members of the county commission and the ballot
8 commissioners that the ballots and any electronic poll books
9 and devices are ready for use.

10 (b) The members of the county commission and the ballot
11 commissioners shall convene at the office of the clerk or at
12 such other place at which any vote-recording devices or
13 electronic poll books and the ballots are stored, not later than
14 five days before the day of the election, and shall inspect the
15 devices, electronic poll books and the ballots to determine
16 whether the requirements of this article have been met.
17 Notice of the place and time of the inspection shall be
18 published, no less than three days in advance, as a Class I-0
19 legal advertisement in compliance with the provisions of
20 article three, chapter fifty-nine of this code. The publication
21 area is the county involved.

22 (c) Any candidate and one representative of each political
23 party on the ballot may be present during the examination.
24 If the devices and electronic poll books and ballots are found
25 to be in proper order, the members of the county commission
26 and the ballot commissioners shall endorse their approval in
27 the book in which the clerk entered the numbers of the
28 devices opposite the numbers of the precincts.

29 (d) The vote-recording devices, the electronic poll books
30 and the ballots shall then be secured in double lock rooms.
31 The clerk and the president or president pro tempore of the
32 county commission shall each have a key. The rooms shall
33 be unlocked only in their presence and only for the removal
34 of the devices, electronic poll books and the ballots for
35 transportation to the polls. Upon removal of the devices, the
36 electronic poll books and the ballots, the clerk and president
37 or president pro tempore of the county commission shall
38 certify in writing signed by them that the devices, the
39 electronic poll books and packages of ballots were found to
40 be sealed when removed for transportation to the polls.

41 (e) Vote-recording devices used during the early voting
42 period may be used on election day if retested in accordance
43 with all the provisions of this section, including public notice
44 between the close of early voting and prior to precinct
45 placement for election day. Vote-recording devices must
46 comply with the applicable requirements of section
47 twenty-six of this article.

48 (f) Not later than one day before the election, the election
49 commissioner of each precinct previously designated by the
50 ballot commissioners shall attend at the office of the clerk of
51 the county commission to receive the necessary election
52 records, books and supplies required by law. The election
53 commissioners shall receive the per diem mileage rate
54 prescribed by law for this service. The election
55 commissioners shall give the ballot commissioners a
56 sequentially numbered written receipt, on a printed form,
57 provided by the clerk of the county commission, for such
58 records, books and supplies. The receipt shall be prepared in
59 duplicate. One copy of the receipt shall remain with the clerk
60 of the county commission and one copy shall be delivered to
61 the president or president pro tempore of the county
62 commission.

§3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.

1 (a) Any reserve vote-recording device used is to be
2 prepared for use by the clerk or his or her duly appointed
3 deputy and the reserve vote-recording device is to be
4 prepared, inspected and sealed and delivered to the polling
5 place wherein the seal is to be broken and the device opened
6 in the presence of the precinct election commissioners who
7 shall certify in writing signed by them to the clerk of the
8 county commission, that the reserve vote-recording device
9 was found to be sealed upon delivery to the polling place,
10 that the seal was broken and the device opened in their
11 presence at the polling place.

12 (b) In counties using electronic poll books, the election
13 commissioners shall examine the electronic poll books to
14 ascertain whether the poll books are in working order before
15 allowing any voters to enter the polling location. If the
16 electronic poll books are not in working order, the election
17 commissioners shall contact the county clerk who shall
18 immediately authorize a printed poll book to serve in place of
19 the electronic poll book for that election. A printed poll book
20 may accompany the electronic poll book to each precinct.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

1 (a) The election officers shall constantly and diligently
2 maintain a watch in order to see that no person votes more
3 than once and to prevent any voter from occupying the voting
4 booth for more than five minutes.

5 (b) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner
7 representing the party to which the voter belongs shall direct

8 the voter to the vote-recording device or supply the voter
9 with a ballot, as may be appropriate, which will allow the
10 voter to vote only for the candidates who are seeking
11 nomination on the ticket of the party with which the voter is
12 affiliated or for unaffiliated voters in accordance with section
13 thirty-one, article two of this chapter.

14 (c) The poll clerk shall issue to each voter when he or she
15 signs the poll book a printed card or ticket numbered to
16 correspond to the number on the poll book of the voter and in
17 the case of a primary election, indicating the party affiliation
18 of the voter, which numbered card or ticket is to be presented
19 to the election commissioner in charge of the voting booth.

20 (d) One hour before the opening of the polls the precinct
21 election commissioners shall arrive at the polling place and
22 set up the voting booths in clear view of the election
23 commissioners. Where applicable, they shall open the
24 vote-recording devices, place them in the voting booths,
25 examine them to see that they have the correct ballots by
26 comparing them with the sample ballots, and determine
27 whether they are in proper working order. They shall open
28 and check the ballots, the electronic poll books, if applicable,
29 supplies, records and forms and post the sample ballots and
30 instructions to voters. Upon ascertaining that all ballots,
31 supplies, electronic poll books, if applicable, records and
32 forms arrived intact, the election commissioners shall certify
33 their findings in writing upon forms provided and collected
34 by the clerk of the county commission over their signatures
35 to the clerk of the county commission. Any discrepancies are
36 to be noted and reported immediately to the clerk of the
37 county commission. The election commissioners shall then
38 number in sequential order the ballot stub of each ballot in
39 their possession and report in writing to the clerk of the
40 county commission the number of ballots received. They
41 shall issue the ballots in sequential order to each voter.

42 (e) Upon entering a precinct which is using an electronic
43 poll book, each voter shall be verified by use of the electronic
44 poll book to be a registered voter. If the voter is not
45 registered according to the electronic poll book within that
46 precinct, the poll clerk is to inform the voter of the proper
47 precinct in which the voter is registered.

48 (f) Where applicable, each voter shall be instructed how
49 to operate the vote-recording device before he or she enters
50 the voting booth.

51 (g) Where applicable, any voter who spoils, defaces or
52 mutilates the ballot delivered to him or her, on returning the
53 ballot to the poll clerks, shall receive another in its place.
54 Every person who does not vote any ballot delivered to him
55 or her shall, before leaving the election room, return the
56 ballot to the poll clerks. When a spoiled or defaced ballot is
57 returned, the poll clerks shall make a minute of the fact on
58 the poll books, at the time, write the word "spoiled" across
59 the face of the ballot and place it in an envelope for spoiled
60 ballots.

61 Immediately on closing the polls, the election
62 commissioners shall ascertain the number of spoiled ballots
63 during the election and the number of ballots remaining not
64 voted. The election commissioners shall also ascertain from
65 the poll books the number of persons who voted and shall
66 report, in writing signed by them to the clerk of the county
67 commission, any irregularities in the ballot boxes, the number
68 of ballots cast, the number of ballots spoiled during the
69 election and the number of ballots unused. All unused ballots
70 are to be returned at the same time to the clerk of the county
71 commission who shall count them and record the number.
72 All unused ballots shall be stored with the other election
73 materials and destroyed at the expiration of twenty-two
74 months.

75 (h) Each commissioner who is a member of an election
76 board which fails to account for every ballot delivered to it is
77 guilty of a misdemeanor and, upon conviction thereof, shall
78 be fined not more than \$1,000 or confined in jail for not more
79 than one year, or both.

80 (i) The board of ballot commissioners of each county, or
81 the chair of the board, shall preserve the ballots that are left
82 over in their hands, after supplying the precincts as provided,
83 until the close of the polls on the day of election and shall
84 deliver them to the clerk of the county commission who shall
85 store them with the other election materials and destroy them
86 at the expiration of twenty-two months.

87 (j) Where ballots are used, the voter, after he or she has
88 marked his or her ballot, shall, before leaving the voting
89 booth, place the ballot inside the envelope or sleeve provided
90 for this purpose, with the stub extending outside the
91 envelope, and return it to an election commissioner who shall
92 remove the stub and deposit the envelope, if applicable, with
93 the ballot inside in the ballot box. No ballot from which the
94 stub has been detached may be accepted by the officer in
95 charge of the ballot box, but the ballot shall be marked
96 "spoiled" and placed with the spoiled ballots. If an electronic
97 voting system is used that utilizes a screen on which votes
98 may be recorded by means of a stylus or by means of touch
99 and the signal warning that a voter has attempted to cast his
100 or her ballot has failed to do so properly has been activated
101 and the voter has departed the polling place and cannot be
102 recalled by a poll clerk to complete his or her ballot while the
103 voter remains physically present in the polling place, then
104 two election commissioners of different registered party
105 affiliations, two poll clerks of different registered party
106 affiliations or an election commissioner and a poll clerk of
107 different registered party affiliations shall spoil the ballot.

108 (k) The precinct election commissioners shall prepare a
109 report in quadruplicate of the number of voters who have

110 voted and, where electronic voting systems are used that
111 utilize a screen on which votes may be recorded by means of
112 a stylus or by means of touch, the number of ballots that were
113 spoiled, as indicated by the poll books, and shall place two
114 copies of this report in the ballot box or where electronic
115 voting systems are used that utilize a screen upon which
116 votes may be recorded by means of a stylus or by means of
117 touch, shall place two copies of this report and the electronic
118 ballot devices in a container provided by the clerk of the
119 county commission, which thereupon is to be sealed with a
120 paper seal signed by the election commissioners to ensure
121 that no additional ballots may be deposited or removed from
122 the ballot box. Two election commissioners of different
123 registered party affiliations or two special messengers of
124 different registered party affiliations appointed by the clerk
125 of the county commission, shall forthwith deliver the ballot
126 box or container to the clerk of the county commission at the
127 central counting center and receive a signed numbered receipt
128 therefor. The receipt must carefully set forth in detail any
129 and all irregularities pertaining to the ballot boxes or
130 containers and noted by the precinct election officers.

131 The receipt is to be prepared in duplicate, a copy of
132 which remains with the clerk of the county commission who
133 shall have any and all irregularities noted. The time of their
134 departure from the polling place is to be noted on the two
135 remaining copies of the report, which are to be immediately
136 mailed to the clerk of the county commission.

137 (I) The poll books, register of voters, unused ballots,
138 spoiled ballots and other records and supplies are to be
139 delivered to the clerk of the county commission, all in
140 conformity with the provisions of this section.

§3-4A-20. Non-affiliated voters in primary elections.

1 Unless a voter, not affiliated with a party, is permitted to
2 participate in the primary election of a political party, the

3 following provisions apply to voters, not affiliated with a
4 party, in primary elections that include non-partisan
5 candidates or public questions:

6 (1) Election officers shall provide a vote recording
7 device, where applicable, or the appropriate ballot to be
8 marked by an electronically sensible pen or ink, or by means
9 of a stylus or by means of touch or by other electronic means,
10 so that voters not affiliated with a party may vote only those
11 portions of the ballot relating to the nonpartisan candidates
12 and the public questions submitted, or shall provide a ballot
13 containing only provisions for voting for those candidates
14 and upon those issues submitted common to the ballots
15 provided to all voters regardless of political party affiliation,
16 or both.

17 (2) In counties utilizing electronic voting systems in
18 which votes are recorded by perforating, if vote recording
19 devices are not available for the voters not affiliated with a
20 party, provisions are to be made for sealing the partisan
21 section or sections of the ballot or ballot labels on a vote
22 recording device using temporary seals, thus permitting the
23 voter not affiliated with a party to vote for the nonpartisan
24 section or sections of the ballot or ballot labels.

25 (3) After a voter not affiliated with a party has voted,
26 temporary seals may be removed and the device may then be
27 used by partisan voters.

§3-4A-27. Proceedings at the central counting center.

1 (a) All proceedings at the central counting center are to
2 be under the supervision of the clerk of the county
3 commission and are to be conducted under circumstances
4 which allow observation from a designated area by all
5 persons entitled to be present. The proceedings shall take
6 place in a room of sufficient size and satisfactory

7 arrangement to permit observation. Those persons entitled to
8 be present include all candidates whose names appear on the
9 ballots being counted or if a candidate is absent, a
10 representative of the candidate who presents a written
11 authorization signed by the candidate for the purpose and two
12 representatives of each political party on the ballot who are
13 chosen by the county executive committee chairperson. A
14 reasonable number of the general public is also freely
15 admitted to the room. In the event all members of the general
16 public desiring admission to the room cannot be admitted at
17 one time, the county commission shall provide for a periodic
18 and convenient rotation of admission to the room for
19 observation, to the end that each member of the general
20 public desiring admission, during the proceedings at the
21 central counting center, is to be granted admission for
22 reasonable periods of time for observation: *Provided*, That no
23 person except those authorized for the purpose may touch
24 any ballot or ballot card or other official records and papers
25 utilized in the election during observation.

26 (b) All persons who are engaged in processing and
27 counting the ballots are to work in teams consisting of two
28 persons of opposite political parties, and are to be deputized
29 in writing and take an oath that they will faithfully perform
30 their assigned duties. These deputies are to be issued an
31 official badge or identification card which is assigned an
32 identity control number and the deputies are to prominently
33 wear on his or her outer garments the issued badge or
34 identification card. Upon completion of the deputies' duties,
35 the badges or identification cards are to be returned to the
36 county clerk.

37 (c) Ballots are to be handled and tabulated and the
38 write-in votes tallied according to procedures established by
39 the Secretary of State, subject to the following requirements:

40 (1) In systems using ballots marked with electronically
41 sensible ink, ballots are to be removed from the boxes and

42 stacked for the tabulator which separates ballots containing
43 marks for a write-in position. Immediately after tabulation,
44 the valid write-in votes are to be tallied. No write-in vote
45 may be counted for an office unless the voter has entered the
46 name of an official write-in candidate for that office on the
47 line provided, either by writing, affixing a sticker or placing
48 an ink-stamped impression thereon;

49 (2) In systems using ballots in which votes are recorded
50 upon screens with a stylus or by means of touch, the
51 personalized electronic ballots are to be removed from the
52 containers and stacked for the tabulator. Systems using
53 ballots in which votes are recorded upon screens with a stylus
54 or by means of touch are to tally write-in ballots
55 simultaneously with the other ballots;

56 (3) When more than one person is to be elected to an
57 office and the voter desires to cast write-in votes for more
58 than one official write-in candidate for that office, a single
59 punch or mark, as appropriate for the voting system, in the
60 write-in location for that office is sufficient for all write-in
61 choices. When there are multiple write-in votes for the same
62 office and the combination of choices for candidates on the
63 ballot and write-in choices for the same office exceed the
64 number of candidates to be elected, the ballot is to be
65 duplicated or hand counted, with all votes for that office
66 rejected;

67 (4) Write-in votes for nomination for any office and
68 write-in votes for any person other than an official write-in
69 candidate are to be disregarded;

70 (5) When a voter casts a straight ticket vote and also
71 marks the location for a write-in vote for an office, the
72 straight ticket vote for that office is to be rejected, whether or
73 not a vote can be counted for a write-in candidate; and

74 (6) Official write-in candidates are those who have filed
75 a write-in candidate's certificate of announcement and have
76 been certified according to the provisions of section four-a,
77 article six of this chapter.

78 (d) If any ballot card is damaged or defective so that it
79 cannot properly be counted by the automatic tabulating
80 equipment, a true duplicate copy is to be made of the
81 damaged ballot card in the presence of representatives of
82 each political party on the ballot and substituted for the
83 damaged ballot card. All duplicate ballot cards are to be
84 clearly labeled "duplicate" and are to bear a serial number
85 which is recorded on the damaged or defective ballot card
86 and on the replacement ballot card.

87 (e) The returns printed by the automatic tabulating
88 equipment at the central counting center, to which have been
89 added write-in and other valid votes, are, when certified by
90 the clerk of the county commission, to constitute the official
91 preliminary returns of each precinct or election district.
92 Further, all the returns are to be printed on a precinct basis.
93 Periodically throughout and upon completion of the count,
94 the returns are to be open to the public by posting the returns
95 as have been tabulated precinct by precinct at the central
96 counting center. Upon completion of the canvass, the returns
97 are to be posted in the same manner.

98 (f) If for any reason it becomes impracticable to count all
99 or a part of the ballots with tabulating equipment, the county
100 commission may direct that they be counted manually,
101 following as far as practicable the provisions governing the
102 counting of paper ballots.

103 (g) As soon as possible after the completion of the count,
104 the clerk of the county commission shall have the vote
105 recording devices properly boxed or securely covered and
106 removed to a proper and secure place of storage.

CHAPTER 61

**(Com. Sub. for H. B. 2936 - By Delegates
Lawrence, Varner, Armstead, Caputo,
Carmichael and Kominar)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §3-5-17 of the Code of West Virginia, 1931, as amended, relating to changing the date of the canvassing of votes in a primary election from the Friday following a primary election to the fifth day following a primary election that is not a Saturday, Sunday or legal holiday.

Be it enacted by the Legislature of West Virginia:

That §3-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-17. Canvassing and certifying returns; recount procedures.

1 The commissioners of the county commission, sitting as
2 a board of canvassers, shall convene at the courthouse of the
3 county on the fifth day following any primary election, which
4 is not a Saturday, Sunday or legal holiday, and shall proceed
5 to canvass the returns of the election. The procedures
6 prescribed in section nine, article six, of this chapter relating
7 to canvass of general election returns, shall, where adaptable,

8 be applied in the canvass of the primary election returns. The
9 board shall proceed to ascertain the result of the election in
10 the county and district and election precincts and cause to be
11 prepared and recorded in the primary election precinct record
12 book a table or tables which show, as to each candidate of
13 each political party for each office, the number of votes cast
14 for him or her at each precinct and the total number cast in
15 the entire county. The board shall then make up and enter in
16 said record book a certificate for each political party
17 showing, as to each candidate for each political party for each
18 office, the total number of votes, in words and figures, cast
19 for him or her in the entire county and the number of votes
20 received by all the candidates of such party in such district in
21 the following form:

22 The board of canvassers of the county of of
23 West Virginia, having carefully and impartially examined the
24 returns of the primary election held in said county on the
25 day of, 20...., do hereby certify that in said county or
26 district, at said election, on the official ballot of the
27 party for the office of, A. B. received
28 (.....) votes; C. D. received (.....) votes.

29 And so on for each office for each political party
30 according to the truth. When the certificates are all entered,
31 the report shall be signed by the members of the board or by
32 a majority of the board. Such members shall also sign
33 separate certificates of the result of the election, within the
34 county, for each of the offices to be filled by each political
35 party as provided by the following section.

36 The provisions of article six of this chapter, relating to
37 the recount of votes in general elections, shall, to the extent
38 applicable, be operative in primary and other elections
39 conducted under provisions of this article.

CHAPTER 62

**(Com. Sub. for H. B. 2853 - By Mr. Speaker,
Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed February 2, 2011; in effect from passage.]
[Approved by the Governor on February 7, 2011.]

AN ACT to amend and reenact §3-10-2 of the Code of West Virginia, 1931, as amended, relating to filling a vacancy in the office of Governor; revising contingencies creating a vacancy in the office of Governor to comport with the West Virginia Constitution; providing for election of Governor if vacancy occurs within first three years of term; providing one time new special elections to fill an existing vacancy in the office of Governor; providing requirements for special elections; providing that provisions relating to special general election do not affect political party creation; prescribing time frames for when new election must take place; providing for the person acting as Governor to issue proclamations relating to new elections; requiring the state to pay costs incurred in connection with any special elections; requiring the person acting as Governor to issue a proclamation setting a special primary election; requiring the proclamations issued by the person acting as Governor to be published; providing that the provisions of the law relating to elections shall apply to the special general election and special primary election unless inconsistent; modifying certain statutory time periods relating to declaration of candidacy; modifying procedures relating to payment of filing fees and drawing of ballot positions; clarifying the eligibility of certain minors to vote in special

primary election; modifying statutory provisions relating to minimum number of ballots to be printed; providing that polling places shall not be changed except for certain situations; providing that constitutionally required redistricting to have no effect until after new special election in 2011 is complete; modifying procedures for persons without party affiliations to nominate candidates; authorizing the Secretary of State to issue administrative orders and to establish procedures and deadlines; providing the provisions applying to the new special elections expire; authorizing Saturday early voting in the special primary election; and requiring Secretary of State to report to Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §3-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-2. Vacancy in office of Governor.

1 (a) In case of the death, conviction on impeachment,
 2 failure to qualify, resignation or other disability of the
 3 Governor, the President of the Senate shall act as Governor
 4 until the vacancy is filled or the disability removed; and if the
 5 President of the Senate, for any of the above-named causes,
 6 shall be or become incapable of performing the duties of
 7 Governor, the same shall devolve upon the Speaker of the
 8 House of Delegates; and in all other cases where there is no
 9 one to act as Governor, one shall be chosen by the joint vote
 10 of the Legislature. Whenever a vacancy shall occur in the
 11 office of Governor before the first three years of the term
 12 shall have expired, a new election for Governor shall take
 13 place to fill the vacancy. The new election shall consist of a

14 special primary election and a special general election, and
15 shall occur at such time as will permit the person elected as
16 Governor in the new election to assume office within one
17 year of the date the vacancy occurred: *Provided*, That the
18 special general election provided in this section may not
19 apply to section eight, article one of this chapter. Within
20 thirty days from the date the vacancy occurs, the person
21 acting as Governor pursuant to the state constitution shall
22 issue a proclamation fixing the time for a new statewide
23 election to fill the vacancy in the office of Governor, which
24 shall be published prior to such election as a Class II-0 legal
25 advertisement in compliance with the provisions of article
26 three, chapter fifty-nine of this code, and the publication area
27 for such publication shall be each county of the state. The
28 proclamation issued by the person acting as Governor
29 pursuant to the state constitution shall provide for a special
30 primary election to nominate candidates for the special
31 general election. The special primary election shall take
32 place no less than ninety days after the proclamation and no
33 later than one hundred forty days from the date that the
34 vacancy in the office occurs. The proclamation issued by the
35 person acting as Governor pursuant to the state constitution
36 shall also provide for a special general election to take place
37 no sooner than ninety days after the special primary election
38 and no later than two hundred eighty days from the date that
39 the vacancy in the office occurs.

40 (b) The compensation of election officers, cost of printing
41 ballots and all other reasonable and necessary expenses in
42 holding and making the return of the new election provided
43 in this section to fill a vacancy in the office of Governor are
44 obligations of the state incurred by the ballot commissioners,
45 clerks of the county commissions and county commissions of
46 the various counties as agents of the state. All expenses of
47 the new election are to be audited by the Secretary of State.
48 The Secretary of State shall prepare and transmit to the

49 county commissions forms on which the county commissions
50 shall certify all expenses of the new election provided in this
51 section to the Secretary of State. If satisfied that the expenses
52 as certified by the county commissions are reasonable and
53 were necessarily incurred, the Secretary of State shall
54 requisition the necessary warrants from the Auditor of the
55 state to be drawn on the State Treasurer and shall mail the
56 warrants directly to the vendors of the new election services,
57 supplies and facilities.

58 (c) Notwithstanding the provisions of subsection (a) of
59 this section to the contrary, for purposes of filling the
60 vacancy that occurred in the office of Governor on November
61 15, 2010, a new election shall occur as follows:

62 (1) Upon the effective date of this subsection, the person
63 acting as Governor pursuant to the state constitution shall
64 immediately issue a proclamation calling for a special
65 primary and general election as provided for in this
66 subsection. For purposes of this subsection, the new elections
67 so provided in the proclamation mean the special primary and
68 general elections as set forth in this subsection.

69 (2) The special primary election shall be held on May 14,
70 2011 and the special general election shall be held on
71 October 4, 2011.

72 (3) The proclamation for the special primary election and
73 special general election shall be published prior to the special
74 primary election and special general election, respectively, as
75 a Class II-0 legal advertisement in accordance with article
76 three, chapter fifty-nine of this code and the publication area
77 for the publication is each county of the state. The notice
78 shall be filed with the Secretary of State who shall cause the
79 document to be published within each county in accordance
80 with this section.

81 (4) The provisions of this chapter apply to the special
82 primary election and special general election to the extent
83 that those provisions are consistent with the provisions of this
84 section. Statutory time deadlines for the purpose of the new
85 election provided in this subsection are modified as follows:

86 (A) A notarized declaration of candidacy and filing fee
87 shall be filed and received in hand by the Secretary of State
88 by 5:00 p.m. on the fifth calendar day following the
89 proclamation of the special primary election. The declaration
90 of candidacy may be filed in person, by United States mail,
91 electronic means or any other means authorized by the
92 Secretary of State;

93 (B) The Secretary of State may issue emergency
94 administrative orders to undertake other ministerial actions
95 that are otherwise authorized pursuant to this code when
96 necessary to assure the preservation of the voting rights of
97 the citizens of this state and avoid fraudulent voting and
98 election activities and otherwise assure the orderly and
99 efficient conduct of the new election provided in this
100 subsection: *Provided*, That emergency administrative orders
101 may not contravene the provisions of this section;

102 (C) For petition in lieu of payment of filing fees, a
103 candidate seeking nomination for the vacancy in the office of
104 Governor may utilize the process set forth in section eight-a,
105 article five of this chapter: *Provided*, That the minimum
106 number of signatures required is one thousand five hundred;

107 (D) Drawing for special primary election ballot position
108 will take place at the Secretary of State's office twenty-four
109 hours after the end of the filing period. For each major
110 political party on the ballot, a single drawing by lot shall
111 determine the candidate ballot position for ballots statewide.
112 This drawing shall be witnessed by four clerks of the county

113 commission chosen by the West Virginia Association of
114 County Clerks, with no more than two clerks representing a
115 single political party. Ballot position for the special general
116 election shall be determined pursuant to subdivision (3),
117 subsection (c), section two, article six of this chapter;

118 (E) A registered voter who has not reached eighteen years
119 of age may vote in the May 14, 2011 special primary
120 election: *Provided*, That the voter will attain eighteen years
121 of age at the time of the special general election provided in
122 this subsection;

123 (F) When paper or optical scan ballots are the primary
124 voting method used at any county, the total number of regular
125 official ballots printed shall equal at a minimum fifty percent
126 of the number of registered voters eligible to vote that ballot;

127 (G) When paper ballots are used in conjunction with a
128 direct recording electronic voting system, the total number of
129 regular official ballots printed shall equal at a minimum thirty
130 percent of the registered voters eligible to vote that ballot;

131 (H) Regularly scheduled locations of polling places may
132 not be changed, except for situations as provided in sections
133 seven-e and seven-f, article one of this chapter: *Provided*,
134 That if multiple precincts voted in one polling location for the
135 November 2, 2010, regularly scheduled general election,
136 these precincts may be consolidated into a single precinct.
137 Locations for consolidated precincts shall provide Internet
138 access, insofar as possible, for the sole purpose of utilizing
139 the Statewide Voter Registration System (SVRS) as an
140 electronic poll book. However, constitutionally mandated
141 redistricting may not take effect until the special primary
142 election and special general election provided in this
143 subsection are complete; and

144 (I) Citizens having no party organization or affiliation
145 may nominate candidates as provided by sections twenty-
146 three and twenty-four of article five of this chapter: *Provided,*
147 That the number of signatures required to be submitted shall
148 be equal to not less than one-quarter of one percent of the
149 entire vote cast at the last preceding general election for
150 governor. Notwithstanding the provisions of sections twenty
151 three and twenty four of article five of this chapter, the
152 signatures, notarized declaration of candidacy, and filing fee
153 must be submitted no later than seven calendar days
154 following the special primary election provided in this
155 subsection.

156 (J) For the special primary election to be held pursuant to
157 this subsection, early voting will also be conducted from 9
158 a.m. to 5 p.m. on the Saturday immediately prior to the end
159 of early voting.

160 (5) The provisions of this subsection shall expire upon
161 the election and qualification of the Governor following the
162 October 4, 2011 special general election.

163 (d) The Secretary of State shall by January 10, 2012
164 report to the Joint Committee on Government and Finance
165 findings regarding the operation of the new election
166 undertaken pursuant to subsection (c) of this section. This
167 report shall provide analysis of the direct and indirect costs
168 to the state associated with the conduct of the new election.

CHAPTER 63

**(Com. Sub. for S. B. 213 - By Senators Foster,
Kessler (Acting President), Chafin, Jenkins,
Laird, Minard, Palumbo, Snyder, Williams,
Hall, Unger, Browning, Wells, Stollings, Plymale,
Prezioso, Miller, Yost, Klempa and Beach**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §61-3C-14a of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8-16 of said code, all relating to crimes using computers, telephones and electronic communications devices; creating offenses for the unlawful transmission of obscene, anonymous, harassing and threatening communications and data by mobile phone, personal digital assistant or other electronic communications device; clarifying provisions pertaining to the unlawful obscene, anonymous, harassing and threatening communications by traditional voice communication by telephone; creating a felony offense for certain repeat offenses using a computer, mobile phone or other electronic communications device; definitions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3C-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8-16 of said code be amended and reenacted, all to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER AND
ELECTRONIC COMMUNICATIONS
DEVICE CRIME AND ABUSE ACT.**

**§61-3C-14a. Obscene, anonymous, harassing and threatening
communications by computer, cell phones and
electronic communication devices; penalty.**

1 (a) It is unlawful for any person, with the intent to harass
2 or abuse another person, to use a computer, mobile phone,
3 personal digital assistant or other electronic communication
4 device to:

5 (1) Make contact with another without disclosing his or
6 her identity with the intent to harass or abuse;

7 (2) Make contact with a person after being requested by
8 the person to desist from contacting them;

9 (3) Threaten to commit a crime against any person or
10 property; or

11 (4) Cause obscene material to be delivered or transmitted
12 to a specific person after being requested to desist from
13 sending such material.

14 (b) For purposes of this section:

15 (1) "Electronic communication device" means and
16 includes a telephone, wireless phone, computer, pager or any
17 other electronic or wireless device which is capable of
18 transmitting a document, image, voice, e-mail or text
19 message using such device in an electronic, digital or analog
20 form from one person or location so it may be viewed or
21 received by another person or persons at other locations.

22 (2) “Use of a computer, mobile phone, personal digital
23 assistant or other electronic communication device” includes,
24 but is not limited to, the transmission of text messages,
25 electronic mail, photographs, videos, images or other
26 nonvoice data by means of an electronic communication
27 system, and includes the transmission of such data,
28 documents, messages and images to another’s computer, e-
29 mail account, mobile phone, personal digital assistant or
30 other electronic communication device.

31 (3) “Obscene material” means material that:

32 (A) An average person, applying contemporary adult
33 community standards, would find, taken as a whole, appeals
34 to the prurient interest, is intended to appeal to the prurient
35 interest, or is pandered to a prurient interest;

36 (B) An average person, applying contemporary adult
37 community standards, would find, depicts or describes, in a
38 patently offensive way, sexually explicit conduct consisting
39 of an ultimate sexual act, normal or perverted, actual or
40 simulated, an excretory function, masturbation, lewd
41 exhibition of the genitals, or sadomasochistic sexual abuse;
42 and

43 (C) A reasonable person would find, taken as a whole,
44 lacks literary, artistic, political or scientific value.

45 (c) It is unlawful for any person to knowingly permit a
46 computer, mobile phone or personal digital assistant or other
47 electronic communication device under his or her control to
48 be used for any purpose prohibited by this section.

49 (d) Any offense committed under this section may be
50 determined to have occurred at the place at which the contact
51 originated or the place at which the contact was received or
52 intended to be received.

53 (e) Any person who violates a provision of this section is
54 guilty of a misdemeanor and, upon conviction thereof, shall
55 be fined not more than \$500 or confined in jail not more than
56 six months, or both fined and confined. For a second or
57 subsequent offense, the person is guilty of a misdemeanor
58 and, upon conviction thereof, shall be fined not more than
59 \$1,000 or confined in jail for not more than one year, or both
60 fined and confined.

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY
AND DECENCY.**

**§61-8-16. Obscene, anonymous, harassing, repeated and
threatening telephone calls; penalty.**

1 (a) It is unlawful for any person with intent to harass or
2 abuse another by means of telephone to:

3 (1) Make any comment, request, suggestion or proposal
4 which is obscene; or

5 (2) Make a telephone call, whether or not conversation
6 ensues, without disclosing his or her identity and with intent
7 to harass any person at the called number; or

8 (3) Make or cause the telephone of another repeatedly or
9 continuously to ring, with intent to harass any person at the
10 called number; or

11 (4) Make repeated telephone calls, during which
12 conversation ensues, with intent to harass any person at the
13 called number; or

14 (5) Threaten to commit a crime against any person or
15 property.

16 (b) It shall be unlawful for any person to knowingly
17 permit any telephone under his or her control to be used for
18 any purpose prohibited by this section.

19 (c) Any offense committed under this section may be
20 deemed to have occurred at the place at which the telephone
21 call was made, or the place at which the telephone call was
22 received.

23 (d) Any person who violates any provision of this section
24 is guilty of a misdemeanor and, upon conviction thereof,
25 shall be fined not more than \$500, or confined in jail not
26 more than six months, or both fined and confined.

CHAPTER 64

**(Com. Sub. for H. B. 2013 - By Delegates
Hamilton and Staggers)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to requirements for enhanced emergency telephone systems and county emergency dispatch centers.

Be it enacted by the Legislature of West Virginia:

That §24-6-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**§24-6-5. Enhanced emergency telephone system requirements.**

1 (a) An enhanced emergency telephone system, at a
2 minimum, shall provide that:

3 (1) All the territory in the county, including every
4 municipal corporation in the county, which is served by
5 telephone company central office equipment that will permit
6 such a system to be established shall be included in the
7 system: *Provided*, That if a portion of the county or a portion
8 of a municipal corporation within the county is already being
9 served by an enhanced emergency telephone system, that
10 portion of the county or municipality may be excluded from
11 the county enhanced emergency telephone system;

12 (2) Every emergency service provider that provides
13 emergency service within the territory of a county participate
14 in the system;

15 (3) Each county answering point be operated constantly;

16 (4) Each emergency service provider participating in the
17 system maintain a telephone number in addition to the one
18 provided in the system; and

19 (5) If the county answering point personnel reasonably
20 determine that a call is not an emergency, the personnel
21 provide the caller with the number of the appropriate
22 emergency service provider.

23 (b) To the extent possible, enhanced emergency
24 telephone systems shall be centralized.

25 (c) In developing an enhanced emergency telephone
26 system, a county commission or the West Virginia State

27 Police shall seek the advice of both the telephone companies
28 providing local exchange service within the county and the
29 local emergency providers.

30 (d) As a condition of employment, a person employed as
31 the director of an emergency dispatch center who dispatches
32 emergency calls or supervises the dispatching of emergency
33 call takers is subject to an investigation of their character and
34 background. This investigation shall include, at a minimum,
35 a criminal background check conducted by the State Police
36 at its expense. A felony conviction shall preclude a person
37 from holding any of these positions.

38 (e) As a condition of continued employment, persons
39 employed to dispatch emergency calls in county emergency
40 dispatch centers shall successfully complete:

41 (1) A forty-hour nationally recognized training course for
42 dispatchers within one year of the date of their employment;
43 and,

44 (2) An additional nationally recognized emergency
45 medical dispatch course or an emergency medical dispatch
46 course approved by the Office of Emergency Medical
47 Services not later than July 1, 2013, or if employed
48 subsequent to July 1, 2013, within one year of the date of
49 employment.

50 (f) On or before July 1, 2013, the director of each county
51 emergency dispatch center shall develop policies and
52 procedures to establish a protocol for dispatching emergency
53 medical calls implementing a nationally recognized emergency
54 medical dispatch program or an emergency medical dispatch
55 program approved by the Office of Emergency Medical
56 Services: *Provided*, That a county's emergency dispatch
57 center, which utilizes a "one-button transfer" system, may
58 continue to use this system, if the county's emergency dispatch

59 center establishes policies and procedures which require the
60 agency to whom the call is transferred to remain on the call
61 until a first responder arrives.

62 (g) Each county or municipality shall appoint for each
63 answering point an enhanced emergency telephone system
64 advisory board consisting of at least six members to monitor
65 the operation of the system. The board shall be appointed by
66 the county or municipality and shall include at least one
67 member from affected:

68 (1) Fire service providers;

69 (2) Law-enforcement providers;

70 (3) Emergency medical providers;

71 (4) Emergency services providers participating in the
72 system; and,

73 (5) Counties or municipalities.

74 The director of the county or municipal enhanced
75 telephone system shall serve as an ex officio member of the
76 advisory board.

77 (h) The initial advisory board shall serve staggered terms
78 of one, two and three years. The initial terms of these
79 appointees shall commence on July 1, 1994. All future
80 appointments shall be for terms of three years, except that an
81 appointment to fill a vacancy shall be for the unexpired term.
82 All members shall serve without compensation. The board
83 shall adopt such policies, rules and regulations as are
84 necessary for its own guidance. The board shall meet
85 monthly, or quarterly. The board may make recommendations
86 to the county or municipality concerning the operation of the
87 system.

88 (i) Nothing herein contained shall be construed to
89 prohibit or discourage in any way the establishment of
90 multijurisdictional or regional systems, or multijurisdictional
91 or regional agreements for the establishment of enhanced
92 emergency telephone systems, and any system established
93 pursuant to this article may include the territory of more than
94 one public agency, or may include only a portion of the
95 territory of a public agency.

CHAPTER 65

**(Com. Sub. for H. B. 3204 - By Delegates Boggs,
Caputo, Varner, Morgan and Fragale)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-6D-1, §12-6D-2, §12-6D-3, §12-6D-4, §12-6D-5 and §12-6D-6, all relating to the West Virginia Enterprise Resource Planning System; creating the Enterprise Resource Planning Board; providing for composition, purpose, powers and duties of the board; creating a steering committee; providing for composition, purpose, powers and duties of the steering committee; providing for expense reimbursement for members of the steering committee; creating the Enterprise Resource Planning System Fund in the state treasury; and transferring funds allocated to the system to the Enterprise Resource Planning System Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §12-6D-1, §12-6D-2, §12-6D-3, §12-6D-4, §12-6D-5 and §12-6D-6, all to read as follows:

ARTICLE 6D. WEST VIRGINIA ENTERPRISE RESOURCE PLANNING BOARD.

§12-6D-1. West Virginia Enterprise Resource Planning Board created; board composition and purpose; Enterprise Resource planning defined.

1 (a) As used in this article “enterprise resource planning”
2 means the implementation of software applications to achieve
3 the comprehensive integration of data sources and processes
4 of state agencies into a unified system that includes the
5 state’s financial management, procurement, personnel,
6 payroll, budget development and other administrative
7 business processes.

8 (b) There is created the West Virginia Enterprise
9 Resource Planning Board, whose purpose is to develop,
10 implement and manage the Enterprise Resource Planning
11 System.

12 (c) The board consists of the Governor, Auditor and the
13 Treasurer, who serve by virtue of their offices and are not
14 entitled to compensation under the provisions of this article.

§12-6D-2. Powers of the board.

1 The board may:

2 (1) Adopt and use a common seal and alter it at pleasure;

3 (2) Sue and be sued;

4 (3) Enter into contracts and execute and deliver
5 instruments;

6 (4) Acquire by purchase, gift or otherwise, hold, use and
7 dispose of real and personal property, deeds, mortgages and
8 other instruments;

9 (5) Accept and receive gifts, grants and other moneys
10 from any source;

11 (6) Promulgate and enforce by-laws and rules for the
12 management and conduct of its affairs;

13 (7) Propose legislative rules, including emergency rules,
14 in accordance with article three, chapter twenty-nine-a of this
15 code to establish a user fee for the maintenance of the
16 Enterprise Resource System;

17 (8) Contract with and retain legal, accounting, financial
18 and information technology managers, advisors and
19 consultants;

20 (9) Delegate to the committee any and all duties of the
21 board deemed necessary and convenient to effectuate the
22 intent of this article;

23 (10) Review and ratify or overrule any decision of the
24 steering committee;

25 (11) Review written appeals submitted by the steering
26 committee chairman at the request of a committee member;
27 and

28 (12) Do all things necessary or convenient to implement
29 and operate the board and carry out the purposes of this
30 article.

§12-6D-3. Management and control of Enterprise Resource Planning System; designation of chair; meetings; executive session.

1 (a) The board shall manage and control the Enterprise
2 Resource Planning System in accordance with the provisions
3 of this article.

4 (b) The Governor shall be the chairperson of the board
5 unless the board votes to elect another member as
6 chairperson.

7 (c) Decisions of the board require unanimous consent of
8 the members.

9 (d) The board may use the staff, policies and procedures
10 of the State Auditor, employ personnel and contract with any
11 person or entity needed to perform the tasks related to the
12 development, management and operation of the Enterprise
13 Resource Planning System.

14 (e) The board shall hold meetings at least quarterly.
15 Board by-laws may provide for additional meetings.

16 (f) All three voting members must be present to constitute
17 a quorum of any meeting.

18 (g) Meetings of the board are subject to the provisions of
19 article nine-a, chapter six of this code.

20 (h) The board may convene in executive session, upon
21 adoption of a proper motion by a board member, when
22 necessary to preserve the attorney-client privilege, to protect
23 the privacy interests of individuals, to review personnel
24 matters, to maintain confidentiality when confidentiality is in
25 the best interest of the participants, or as otherwise provided
26 by law.

§12-6D-4. Steering Committee created; powers and authority.

1 (a) There is created a sixteen member steering committee
2 of the board whose purpose is to provide routine oversight of
3 the implementation and management of the enterprise
4 resource planning system and perform duties delegated to
5 them by the board.

6 (b) The steering committee shall annually elect a
7 chairperson to chair the committee.

8 (c) A steering committee member may appeal any action
9 of the committee to the board by submitting a written request
10 for board review to the steering committee chairperson within
11 ten days of the disputed committee action. The committee
12 chairperson shall forward the appeal to the board. The board
13 shall review appeals at the next regularly scheduled board
14 meeting and shall ratify or overturn the decision of the board
15 in writing. No disputed action of the committee may
16 proceed, if appealed to the board, until ratified or overturned
17 by the board.

18 (d) The steering committee shall consist of sixteen
19 members, as follows:

20 (1) The Secretary of the Department of Administration,
21 the Secretary of Revenue, the Secretary of Transportation,
22 and the Secretary of Health and Human Resources. They
23 shall serve by virtue of their offices, are not entitled to
24 compensation under the provisions of this article, and are
25 subject to all duties, responsibilities and requirements of the
26 provisions of this article;

27 (2) Five persons appointed by the Governor, three of
28 whom will be representatives of institutions of Higher
29 Education;

- 30 (3) Two persons appointed by the State Auditor;
- 31 (4) Two persons appointed by the State Treasurer;
- 32 (5) A member of the Senate appointed by the President of
33 the Senate, who shall be a non-voting member; and
- 34 (6) A member of the House of Delegates appointed by the
35 Speaker of the House, who shall be a non-voting member;
- 36 (7) A member who represents public employees, who
37 shall be a non-voting member.
- 38 (e) A member may appoint a designee to serve on his or
39 her behalf.
- 40 (f) A member may serve until his or her appointment is
41 revoked or until his or her successor is appointed and
42 qualified.
- 43 (g) Members are entitled to reasonable and necessary
44 expenses actually incurred in discharging committee duties
45 pursuant to this article.

§12-6D-5. Enterprise Resource Planning Fund.

1 There is hereby created a fund in the State Treasury
2 entitled the Enterprise Resource Planning System Fund to be
3 administered by the board. The fund shall consist of any
4 appropriations or transfers made for the purpose of studying,
5 evaluating, creating, developing, implementing and managing
6 a new Enterprise Resource Planning System and any fees
7 collected in accordance with legislative rules approved by the
8 board and proposed pursuant to this article. Expenditures
9 from the fund are to be made for the purposes set forth in this
10 article in accordance with appropriations by the Legislature
11 and are not authorized from collections.

§12-6D-6. Transfer of Enterprise Resource Planning Funds.

1 The unencumbered balances of all funds allocated to the
 2 enterprise resource planning system for fiscal year ending
 3 June 30, 2011, and the fiscal year ending June 30, 2012, are
 4 hereby transferred to the Enterprise Resource Planning
 5 System Fund on the effective date of this section in the year
 6 2011.

CHAPTER 66

**(H. B. 2551 - By Delegates Doyle, Guthrie,
 Ferro, Frazier, Reynolds and Walters)**

[Passed March 12, 2011; in effect ninety days from passage.]
 [Approved by the Governor on April 4, 2011.]

AN ACT to repeal §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia, 1931, as amended; to repeal §44-5-12, §44-5-13, §44-5-14 and §44-5-15 of said code; to repeal §44-6-2a of said code; to repeal §44-14-1, §44-14-2, §44-14-3 §44-14-4 and §44-14-5 of said code; to amend and reenact §38-1-13 of said code; to amend said code by adding thereto a new section, designated §44-4-22; to amend and reenact §44-5-1, §44-5-7 and §44-5-11 of said code; to amend and reenact §44-5A-2, §44-5A-3 and §44-5A-4 of said code; to amend said code by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; to amend and reenact §44-6-1 and §44-6-2 of said code; to amend said code by adding thereto a new section, designated §44-6-11; to amend and reenact §44-6C-1, §44-6C-2 and §44-6C-9 of said code; to amend and reenact §44-7-1 of said code; to amend said

code by adding thereto a new section, designated §44-7-4; and to amend said code by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901, §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104 and §44D-11-1105, all relating generally to estates and trusts and their administration; providing that certain provisions of current law to have no effect after specified date; providing certain provisions of current law are not to apply to trusts and trustees after specified date; changing names of certain articles of existing code; providing for the creation, administration, revision and termination of trusts; providing for trustees, powers and duties of trustees and substitution of trustees; providing for distribution of trust assets; specifying powers and certain restrictions on powers of fiduciaries; amending the Uniform Prudent Investor Act; modernizing language of certain existing sections of code and deleting obsolete language; adopting West Virginia Uniform Trust

Code; providing general provisions and definitions; providing for judicial proceedings; providing for representation of trusts; providing for creation, validity, modification and termination of trusts; providing for creditor's claims; providing for spendthrift trusts, discretionary trusts and revocable trusts; providing for the office of trustee; providing duties and powers of trustees; providing for liability of trustees and rights of persons dealing with trustee; providing various miscellaneous provisions for trusts and trustees; specifying delayed effective date for West Virginia Uniform Trust Code; and providing rules for application of that date.

Be it enacted by the Legislature of West Virginia:

That §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia, 1931, as amended, be repealed; that §44-5-12, §44-5-13, §44-5-14 and §44-5-15 be repealed; that §44-6-2a be repealed; that §44-14-1, §44-14-2, §44-14-3, §44-14-4 and §44-14-5 be repealed; that §38-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-4-22; that §44-5-1, §44-5-7, §44-5-11 of said code be amended and reenacted; that §44-5A-2, §44-5A-3 and §44-5A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; that §44-6-1 and §44-6-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-6-11; that §44-6C-1, §44-6C-2, and §44-6C-9 of said code be amended and reenacted; that §44-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-7-4; and that said code be amended by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403,

§44D-4-404, §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901, §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104 and §44D-11-1105, all to read as follows:

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-13. Substitution of trustees under a trust deed securing a debt.

1 (a) When a trust deed to secure a debt or obligation does
2 not by its terms prescribe a method for substitution, the party
3 secured by the trust deed, or any surety indemnified by the
4 deed, or the assignee or personal representative of any
5 secured party or surety may, if there is a death, removal,
6 declination, resignation, refusal or inability of the original
7 trustee or trustees named in the instrument, substitute a
8 trustee or trustees in his or her, or its place by a writing duly
9 signed and acknowledged and recorded in the office of the
10 clerk of the county commission where the real estate covered
11 by the trust deed is situate.

12 (b) When a substitution is made under this section of a
13 trustee or trustees of a trust deed securing a debt or
14 obligation, the substitution is effected when the party
15 secured, or a surety indemnified by the deed, or the assignee
16 or personal representative of any such secured party or surety
17 has deposited true copies of the notice of the substitution in
18 the United States mail, first class postage prepaid, addressed
19 to the last known addresses of the grantor or grantors or any
20 other person owing the debt or obligation, and has presented
21 the original of the notice to the clerk of the county
22 commission in whose office the trust deed is recorded,
23 causing the notice to be recorded and indexed in a general
24 lien book or other appropriate book in which trust deeds or
25 assignments of trust deeds are recorded. There shall be
26 appended to the notice presented for recording a certificate
27 by the party making the substitution, certifying that copies of
28 the notice were mailed as required by this subsection, and
29 showing the date of the mailing.

30 (c) It is not necessary to give notice under this section to
31 a trustee who has removed from the state, declined to accept
32 the trust, refused to act as trustee, or has resigned, or to the
33 personal representative of one who has died.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 4. ACCOUNTING BY PERSONAL REPRESENTATIVES.

§44-4-22. Application only to personal representatives, guardians, curators or committees.

1 The provisions of this article apply only to personal
2 representatives, guardians, curators or committees, as the
3 case may be, and do not apply to or affect trustees who are

4 governed by the provisions of the West Virginia Uniform
5 Trust Code in chapter forty-four-d of this code.

**ARTICLE 5. GENERAL PROVISIONS AS TO PERSONAL
REPRESENTATIVES.**

§44-5-1. List of fiduciaries.

1 (a) The clerk of the county commission of each county
2 shall keep a record, to be known as the "Record of
3 Fiduciaries," in which he or she shall enter, in separate
4 columns, first, the name of every fiduciary authorized to act
5 as such by the county commission or clerk of the county
6 commission; secondly, the name of the decedent for whose
7 estate he or she is personal representative or curator; thirdly,
8 the names of the distributees of the estate, showing their
9 relation to the decedent; fourthly, the name of the living
10 person or persons for whom he or she is minor guardian,
11 curator, committee or trustee; fifthly, the penalty of his or her
12 bond; sixthly, the names of his or her sureties; seventhly, the
13 date of the order conferring his or her authority, and a
14 reference to the book and page where entered; eighthly, the
15 date of any order revoking his or her authority, and a
16 reference to the book and page where entered; ninthly, the
17 date of the return of every inventory and appraisement of the
18 estate; tenthly, the date of the confirmation of each report of
19 settlement of the accounts of the fiduciary; and the clerk shall
20 index the record in the name of the decedent, estate, ward or
21 person represented by the fiduciary. Any clerk failing to
22 make entry, as to any fiduciary, within ten days after the
23 order conferring or revoking the authority, or the date of the
24 return of the inventory and/or appraisement, or the date of the
25 confirmation of any report of settlement, shall, for every
26 failure, forfeit \$20.

27 (b) This section does not apply to a trustee.

§44-5-7. Authority of personal representatives to compound and compromise liabilities due to or from them.

1 It is lawful for any guardian, committee or trustee, to
2 compound and compromise any liability due to or from him
3 or her, unless the compounding and compromise is ratified
4 and approved by a court of competent jurisdiction, all parties
5 in interest being before the court by proper process. When
6 the compounding and compromise has been ratified and
7 approved, it is binding on all parties in interest before the
8 court. It is lawful for any personal representative to
9 compound and compromise any liability due to or from him
10 or her, as long as the compounding and compromise is
11 ratified and approved by the fiduciary commissioner to whom
12 the estate or trust has been referred, or by a commissioner
13 appointed by the circuit court when the estate of the decedent
14 is being settled in a chancery suit, and is reported by the
15 fiduciary commissioner to his or her court. When the report
16 is confirmed, the compounding and compromise shall be
17 binding on all parties to the proceedings.

§44-5-11. Application only to personal representatives, curators, and minor guardians.

1 The provisions of this article apply only to personal
2 representatives, curators, and minor guardians, as the case
3 may be, and do not apply to or affect guardians and
4 conservators of adult protected persons who are governed by
5 the provisions of the Guardian and Conservatorship Act in
6 chapter forty-four-a of this code or trustees who are governed
7 by the provisions of the West Virginia Uniform Trust Code
8 in chapter forty-four-d of this code.

ARTICLE 5A. POWERS OF FIDUCIARIES.

§44-5A-2. Incorporation by reference of enumerated powers by testator; restriction on exercise of powers.

1 (a) After June 30, 2011, by an intention of the testator
2 expressed in a will, any or all of the powers or any portion of the

3 powers enumerated in section three of this article, as they exist
4 at the time of the signing of the will by the testator may be, by
5 appropriate reference made thereto, incorporated in the will, with
6 the same effect as though the language were set forth verbatim
7 in the instrument. Incorporation of one or more of the powers
8 contained in section three of this article by reference to that
9 section is in addition to and not in limitation of the common law
10 or statutory powers of the fiduciary.

11 (b) No power of authority conferred upon a fiduciary as
12 provided in this article may be exercised by the fiduciary in
13 a manner as, in the aggregate, to deprive the trust or the estate
14 involved of an otherwise available tax exemption, deduction
15 or credit, expressly including the marital deduction, or
16 operate to impose a tax upon a donor or testator or other
17 person as owner of any portion of the trust or estate involved.
18 "Tax" includes, but is not limited to, any federal, state, or
19 local income, gift, estate or inheritance tax.

20 (c) Nothing in this section prevents the incorporation of
21 the powers enumerated in section three of this article in any
22 other kind of instrument or agreement.

**§44-5A-3. Powers which may be incorporated by reference in
trust instrument.**

1 The following powers may be incorporated by reference
2 by a testator in the will as provided in section two of this
3 article and the following powers apply without the need for
4 incorporation by reference to trustees who are governed by
5 the provisions of the West Virginia Uniform Trust Code in
6 chapter forty-four-d of this code:

7 (a) *Retain original property.* -- To retain for the time the
8 fiduciary considers advisable any property, real or personal,

9 which the fiduciary may receive, even though the retention of
10 the property by reason of its character, amount, proportion to
11 the total estate or otherwise would not be appropriate for the
12 fiduciary apart from this provision.

13 (b) *Sell and exchange property.* -- To sell, exchange, give
14 options upon, partition or otherwise dispose of any property
15 or interest therein which the fiduciary may hold from time to
16 time, with or without order of court, at public or private sale
17 or otherwise, upon the terms and conditions, including credit,
18 and for the consideration the fiduciary considers advisable,
19 and to transfer and convey the property or interest therein
20 which is at the disposal of the fiduciary, in fee simple
21 absolute or otherwise, free of all trust; and the party dealing
22 with the fiduciary is not under a duty to follow the proceeds
23 or other consideration received by the fiduciary from the sale
24 or exchange.

25 (c) *Invest and reinvest.* -- To invest and reinvest, as the
26 fiduciary considers advisable, in stocks (common or
27 preferred), bonds, debentures, notes, mortgages or other
28 securities, in or outside the United States; in insurance
29 contracts on the life of any beneficiary or of any person in
30 whom a beneficiary has an insurable interest, or in annuity
31 contracts for any beneficiary, in any real or personal
32 property, in investment trusts; in participations in common
33 trust funds, and generally in property the fiduciary considers
34 advisable, even though the investment is not of the character
35 approved by applicable law but for this provision.

36 (d) *Invest without diversification.* -- To make investments
37 which cause a greater proportion of the total property held by
38 the fiduciary to be invested in investments of one type or of
39 one company than would be considered appropriate for the
40 fiduciary apart from this provision.

41 (e) *Continue business.* -- To the extent and upon terms
42 and conditions and for the periods as the fiduciary considers
43 necessary or advisable, to continue or participate in the
44 operation of any business or other enterprise, whatever its
45 form of organization, including, but not limited to, the power:

46 (1) To effect incorporation, dissolution, or other change
47 in the form of the organization of the business or enterprise;

48 (2) To dispose of any interest therein or acquire the
49 interest of others therein;

50 (3) To contribute thereto or invest therein additional
51 capital or to lend money thereto, in any case upon terms and
52 conditions the fiduciary approves from time to time;

53 (4) To determine whether the liabilities incurred in the
54 conduct of the business are to be chargeable solely to the part
55 of the estate or trust set aside for use in the business or to the
56 estate or trust as a whole; and

57 (5) In all cases in which the fiduciary is required to file
58 accounts in any court or in any other public office, it is not
59 necessary to itemize receipts and disbursements and
60 distributions of property but it is sufficient for the fiduciary
61 to show in the account a single figure or consolidation of
62 figures, and the fiduciary is permitted to account for money
63 and property received from the business and any payments
64 made to the business in lump sum without itemization.

65 (f) *Form corporation or other entity.* -- To form a
66 corporation or other entity and to transfer, assign, and convey
67 to the corporation or entity all or any part of the estate or of
68 any trust property in exchange for the stock, securities or
69 obligations of the corporation or entity, and to continue to
70 hold the stock and securities and obligations.

71 (g) *Operate farm.* -- To continue any farming operation

72 received by the fiduciary pursuant to the will or other
73 instrument and to do any and all things considered advisable
74 by the fiduciary in the management and maintenance of the
75 farm and the production and marketing of crops and dairy,
76 poultry, livestock, orchard and forest products including, but
77 not limited to, the following powers:

78 (1) To operate the farm with hired labor, tenants or
79 sharecroppers;

80 (2) To lease or rent the farm for cash or for a share of the
81 crops;

82 (3) To purchase or otherwise acquire farm machinery and
83 equipment and livestock;

84 (4) To construct, repair and improve farm buildings of all
85 kinds needed in the fiduciary's judgment, for the operation of
86 the farm;

87 (5) To make or obtain loans or advances at the prevailing
88 rate or rates of interest for farm purposes such as for
89 production, harvesting or marketing, or for the construction,
90 repair or improvement of farm buildings or for the purchase
91 of farm machinery or equipment or livestock;

92 (6) To employ approved soil conservation practices in
93 order to conserve, improve and maintain the fertility and
94 productivity of the soil;

95 (7) To protect, manage and improve the timber and forest
96 on the farm and sell the timber and forest products when it is
97 to the best interest of the estate;

98 (8) To ditch, dam and drain damp or wet fields and areas
99 of the farm when and where needed;

100 (9) To engage in the production of livestock, poultry or

101 dairy products, and to construct such fences and buildings
102 and plant pastures and crops necessary to carry on the
103 operations;

104 (10) To market the products of the farm; and

105 (11) In general, to employ good husbandry in the farming
106 operation.

107 (h) *Manage real property.* -- (1) To improve, manage,
108 protect and subdivide any real property;

109 (2) To dedicate or withdraw from dedication parks,
110 streets, highways or alleys;

111 (3) To terminate any subdivision or part thereof;

112 (4) To borrow money for the purposes authorized by this
113 subdivision for periods and upon terms and conditions as to
114 rates, maturities and renewals the fiduciary considers
115 advisable and to mortgage or otherwise encumber any
116 property or part thereof, whether in possession or reversion;

117 (5) To lease any property or part thereof to commence at
118 the present or in the future, upon terms and conditions,
119 including options to renew or purchase, and for such period
120 or periods the fiduciary considers advisable although the
121 period or periods may extend beyond the duration of the trust
122 or the administration of the estate involved;

123 (6) To make coal, gravel, sand, oil, gas and other mineral
124 leases, contracts, licenses, conveyances or grants of every
125 nature and kind which are lawful in the jurisdiction in which
126 the property lies;

127 (7) To manage and improve timber and forests on the
128 property, to sell the timber and forest products, and to make
129 grants, leases, and contracts with respect thereto;

130 (8) To modify, renew or extend leases;

131 (9) To employ agents to rent and collect rents;

132 (10) To create easements and release, convey or assign
133 any right, title or interest with respect to any easement on the
134 property or part of the property;

135 (11) To erect, repair or renovate any building or other
136 improvement on the property, and to remove or demolish any
137 building or other improvement, in whole or in part; and

138 (12) To deal with the property and every part of the
139 property in all other ways and for other purposes or
140 considerations as it would be lawful for any person owning
141 the same to deal with the property either in the same or in
142 different ways from those specified elsewhere in this
143 subdivision.

144 (i) *Pay taxes and expenses.* -- To pay taxes, assessments,
145 compensation of the fiduciary, and other expenses incurred
146 in the collection, care, administration, and protection of the
147 trust or estate.

148 (j) *Receive additional property.* -- To receive additional
149 property from any source and administer the additional
150 property as a portion of the appropriate trust or estate under
151 the management of the fiduciary but the fiduciary is not
152 required to receive the property without his or her consent.

153 (k) *Deal with other trusts.* -- In dealing with one or more
154 fiduciaries:

155 (1) To sell property, real or personal, to, or to exchange
156 property with, the trustee of any trust which the decedent or
157 the settlor or his or her spouse or any child of his or her
158 creation, for estates and upon terms and conditions as to sale

159 price, terms of payment, and security as the fiduciary
160 considers advisable; and the fiduciary is under no duty to
161 follow the proceeds of any such sale; and

162 (2) To borrow money for periods and upon terms and
163 conditions as to rates, maturities, renewals and securities the
164 fiduciary considers advisable from any trust created by the
165 decedent, his or her spouse, or any child of his or her, for the
166 purpose of paying debts of the decedent, taxes, the costs of
167 the administration of the estate, and like charges against the
168 estate, or any part thereof, or discharging the liability of any
169 fiduciary thereof and to mortgage, pledge or otherwise
170 encumber a portion of the estate or any trust as may be
171 required to secure the loan or loans and to renew the loans.

172 (1) *Borrow money.* -- To borrow money for periods and
173 upon terms and conditions as to rates, maturities, renewals,
174 and security the fiduciary considers advisable, including the
175 power of a corporate fiduciary to borrow from its own
176 banking department, for the purpose of paying debts, taxes or
177 other charges against the estate or any trust, or any part
178 thereof, and to mortgage, pledge or otherwise encumber a
179 portion of the estate or any trust as may be required to secure
180 the loan or loans; and to renew existing loans either as maker
181 or endorser.

182 (m) *Make advances.* -- To advance money for the
183 protection of the trust or estate, and for all expenses, losses
184 and liabilities sustained in the administration of the trust or
185 estate or because of the holding or ownership of any trust or
186 estate assets, for which advances with any interest the
187 fiduciary has a lien on the assets of the trust or estate as
188 against a beneficiary.

189 (n) *Vote shares.* -- To vote shares of stock owned by the
190 estate or any trust at stockholders meetings in person or by
191 special, limited or general proxy, with or without power of
192 substitution.

193 (o) *Register in name of nominee.* -- To hold a security in
194 the name of a nominee or in other form without disclosure of
195 the fiduciary relationship so that title to the security may pass
196 by delivery, but the fiduciary is liable for any act of the
197 nominee in connection with the stock so held.

198 (p) *Exercise options, rights and privileges.* -- To exercise
199 all options, rights, and privileges to convert stocks, bonds,
200 debentures, notes, mortgages or other property into other
201 stocks, bonds, debentures, notes, mortgages or other
202 property; to subscribe for other or additional stocks, bonds,
203 debentures, notes, mortgages or other property; and to hold
204 the stocks, bonds, debentures, notes, mortgages or other
205 property so acquired as investments of the estate or trust so
206 long as the fiduciary considers advisable.

207 (q) *Participate in reorganizations.* -- To unite with other
208 owners of property similar to any which may be held at any
209 time in the decedent's estate or in any trusts in carrying out
210 any plan for the consolidation or merger, dissolution or
211 liquidation, foreclosure, lease or sale of the property,
212 incorporation or reincorporation, reorganization or
213 readjustment of the capital or financial structure of any
214 corporation, company or association the securities of which
215 may form any portion of an estate or trust; to become and
216 serve as a member of a stockholders or bondholders
217 protective committee; to deposit securities in accordance with
218 any plan agreed upon; to pay any assessments, expenses or
219 sums of money that may be required for the protection or
220 furtherance of the interest of the distributees of an estate or
221 beneficiaries of any trust with reference to the plan; and to
222 receive as investments of an estate or any trust any securities
223 issued as a result of the execution of the plan.

224 (r) *Reduce interest rates.* -- To reduce the interest rate
225 from time to time on any obligation, whether secured or
226 unsecured, constituting a part of an estate or trust.

227 (s) *Renew and extend obligations.* -- To continue any
228 obligation, whether secured or unsecured, upon and after
229 maturity with or without renewal or extension upon terms the
230 fiduciary considers advisable, without regard to the value of
231 the security, if any, at the time of the continuance.

232 (t) *Foreclose and bid in.* -- To foreclose, as an incident to
233 the collection of any bond, note or other obligation, any
234 mortgage, deed of trust or other lien securing the bond, note
235 or other obligation, and to bid in the property at the
236 foreclosure sale, or to acquire the property by deed from the
237 mortgagor or obligor without foreclosure; and to retain the
238 property so bid in or taken over without foreclosure.

239 (u) *Insure.* -- To carry insurance coverage, including
240 public liability, for hazards and in amounts, either in stock
241 companies or in mutual companies, as the fiduciary considers
242 advisable.

243 (v) *Collect.* -- To collect, receive and receipt for rents,
244 issues, profits, and income of an estate or trust.

245 (w) *Litigate, compromise or abandon.* -- To compromise,
246 adjust, arbitrate, sue on or defend, abandon or otherwise deal
247 with and settle claims in favor of or against the estate or trust
248 as the fiduciary considers advisable, and the fiduciary's
249 decision is conclusive between the fiduciary and the
250 beneficiaries of the estate or trust and the person against or
251 for whom the claim is asserted, in the absence of fraud by
252 those persons; and in the absence of fraud, bad faith or gross
253 negligence of the fiduciary, is conclusive between the
254 fiduciary and the beneficiaries of the estate or trust.

255 (x) *Employ and compensate agents, etc.* -- To employ and
256 compensate, out of income or principal or both and in
257 proportion as the fiduciary considers advisable, persons
258 considered by the fiduciary needful to advise or assist in the

259 proper settlement of the estate or administration of any trust,
260 including, but not limited to, agents, accountants, brokers,
261 attorneys-at-law, attorneys-in-fact, investment brokers, rental
262 agents, realtors, appraisers, and tax specialists; and to do so
263 without liability for any neglect, omission, misconduct or
264 default of the agent or representative as long as he or she was
265 selected and retained with due care on the part of the
266 fiduciary.

267 (y) *Acquire and hold property of two or more trusts*
268 *undivided.* -- To acquire, receive, hold and retain the
269 principal of several trusts created by a single instrument
270 undivided until division becomes necessary in order to make
271 distributions; to hold, manage, invest, reinvest, and account
272 for the several shares or parts of shares by appropriate entries
273 in the fiduciary's books of account, and to allocate to each
274 share or part of share its proportionate part of all receipts and
275 expenses: *Provided,* That the provisions of this subdivision
276 do not defer the vesting in possession of any share or part of
277 share of the estate or trust.

278 (z) *Establish and maintain reserves.* -- To set up proper
279 and reasonable reserves for taxes, assessments, insurance
280 premiums, depreciation, obsolescence, amortization,
281 depletion of mineral or timber properties, repairs,
282 improvements and general maintenance of buildings or other
283 property out of rents, profits or other income received; and to
284 set up reserves also for the equalization of payments to or for
285 beneficiaries: *Provided,* That the provisions of this
286 subdivision do not affect the ultimate interests of
287 beneficiaries in the reserves.

288 (aa) *Distribute in cash or kind.* -- To make distribution of
289 capital assets of the estate or trust in kind or in cash, or
290 partially in kind and partially in cash, in divided or undivided
291 interests, as the fiduciary finds to be most practicable and for
292 the best interests of the distributees; and to determine the

293 value of capital assets for the purpose of making distribution
294 thereof if and when there is more than one distributee thereof,
295 which determination is binding upon the distributees unless
296 clearly capricious, erroneous and inequitable: *Provided,*
297 That the fiduciary may not exercise any power under this
298 subdivision unless the fiduciary holds title to or an interest in
299 the property to be distributed and is required or authorized to
300 make distribution thereof.

301 (bb) *Pay to or for minors or incompetents.* -- To make
302 payments in money, or in property in lieu of money, to or for
303 a minor or incompetent in any one or more of the following
304 ways:

305 (1) Directly to the minor or incompetent;

306 (2) To apply directly in payment for the support,
307 maintenance, education, and medical, surgical, hospital or
308 other institutional care of the minor or incompetent;

309 (3) To the legal or natural guardian of the minor or
310 incompetent;

311 (4) To any other person, whether or not appointed
312 guardian of the person by any court, who does, in fact, have
313 the care and custody of the person of the minor or
314 incompetent.

315 The fiduciary is not under any duty to see to the
316 application of the payments so made, if the fiduciary
317 exercised due care in the selection of the person, including
318 the minor or incompetent, to whom the payments were made;
319 and the receipt of the person is full acquittance to the
320 fiduciary.

321 (cc) *Apportion and allocate receipts and expenses.* --
322 Where not otherwise provided by statute to determine:

323 (1) What is principal and what is income of any estate or
324 trust and to allocate or apportion receipts and expenses as
325 between principal and income in the exercise of the
326 fiduciary's discretion, and, by way of illustration and not
327 limitation of the fiduciary's discretion, to charge premiums
328 on securities purchased at a premium against principal or
329 income or partly against each;

330 (2) Whether to apply stock dividends and other noncash
331 dividends to income or principal or apportion them as the
332 fiduciary considers advisable; and

333 (3) What expenses, costs, taxes (other than estate,
334 inheritance, and succession taxes and other governmental
335 charges) shall be charged against principal or income or
336 apportioned between principal and income and in what
337 proportions.

338 (dd) *Make contracts and execute instruments.* -- To make
339 contracts and to execute instruments, under seal or otherwise,
340 as may be necessary in the exercise of the powers granted in
341 this section.

342 (ee) The foregoing powers are limited as follows for any
343 trust which is classified as a "private foundation" as that term
344 is defined by section 509 of the Internal Revenue Code of
345 1954 or corresponding provisions of any subsequent federal
346 tax laws (including each nonexempt charitable trust described
347 in section 4947(a)(1) of the code which is treated as a private
348 foundation) or nonexempt split-interest trust described in
349 section 4947(a)(2) of the Internal Revenue Code of 1954 or
350 corresponding provisions of any subsequent federal tax laws
351 (but only to the extent that section 508(e) of the code is
352 applicable to the nonexempt split-interest trust under section
353 4947(a)(2)):

354 (1) The fiduciary shall make distributions of amounts, for
355 each taxable year, at times and in a manner as not to become

356 subject to the tax imposed by section 4942 of the Internal
357 Revenue Code of 1954, or corresponding provisions of any
358 subsequent federal tax laws;

359 (2) No fiduciary may engage in any act of self-dealing as
360 defined in section 4941(d) of the Internal Revenue Code of
361 1954, or corresponding provisions of any subsequent federal
362 tax laws;

363 (3) No fiduciary may retain any excess business holdings
364 as defined in section 4943(c) of the Internal Revenue Code of
365 1954, or corresponding provisions of any subsequent federal
366 tax laws;

367 (4) No fiduciary may make any investments in a manner
368 as to subject the trust to tax under section 4944 of the Internal
369 Revenue Code of 1954, or corresponding provisions of any
370 subsequent federal tax laws;

371 (5) No fiduciary may make any taxable expenditures as
372 defined in section 4945(e) of the Internal Revenue Code of
373 1954, or corresponding provisions of any subsequent federal
374 tax laws.

§44-5A-4. Designation of testamentary trustee as beneficiary of insurance.

1 A policy of life insurance may contain a designation of a
2 beneficiary, a trustee or trustees named or to be named by
3 will, if the designation is made in accordance with the
4 provisions of the policy and the requirements of the insurer.
5 The proceeds of the insurance shall be paid to the trustee or
6 trustees to be held and disposed of under the terms of the will
7 as they exist at the death of the testator; but if no trustee or
8 trustees makes claim to the proceeds from the insurance
9 company within one year after the death of the insured, or if
10 satisfactory evidence is furnished the insurance company

11 within the one-year period showing that no trustee can
12 qualify to receive the proceeds, payment shall be made by the
13 insurance company to the executors, administrators or
14 assigns of the insured, unless otherwise provided by
15 agreement with the insurance company during the lifetime of
16 the insured. The proceeds of the insurance as collected by
17 the trustee or trustees are not subject to debts of the insured
18 or to inheritance tax to any greater extent than if the proceeds
19 were payable to any other named beneficiary other than the
20 estate of the insured, and are not considered as payable to the
21 estate of the insured for any purpose. The insurance proceeds
22 so held in trust may be commingled with any other assets
23 which may properly come into the trust as provided in the
24 will. Enactment of this section does not invalidate previous
25 life insurance policy designations naming trustees of trusts
26 established by will.

§44-5A-5. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.

1 (a) Where a will, trust or other governing instrument
2 authorizes or directs the fiduciary to satisfy wholly or partly
3 in kind a pecuniary bequest or a separate trust to be funded
4 by a pecuniary amount or formula unless the will, trust or
5 other governing instrument expressly provides otherwise, the
6 assets selected by the fiduciary for that purpose shall be
7 valued at their respective values on the date or dates of their
8 distribution, and if any pecuniary bequests or separate trusts
9 established under the will or trust by a pecuniary amount or
10 formula is not entirely funded or an amount necessary to fund
11 the bequest or trust completely is not irrevocably set aside
12 within fifteen months after the date of the testator's or
13 grantor's death, the fiduciary shall allocate to the bequest or

14 trust a prorata share of the income earned by the estate of the
15 testator or grantor or other fund from which the bequest or
16 trust is to be funded between the date of death of the testator
17 or grantor and the date or dates of the funding.

18 (b) Whenever a fiduciary under the provisions of a will,
19 trust or other governing instrument is required to satisfy a
20 pecuniary bequest or transfer in trust and is authorized to
21 satisfy the bequest or transfer by selection and distribution of
22 assets in kind, and the will, trust or other governing
23 instrument further provides that the assets to be so distributed
24 shall or may be valued by some standard other than their fair
25 market value on the date of distribution, the fiduciary, unless
26 the will, trust or other governing instrument otherwise
27 specifically directs, shall distribute assets, including cash,
28 fairly representative of appreciation or depreciation in the
29 value of all property available for distribution in satisfaction
30 of the pecuniary bequest or transfer. This section does not
31 apply to prevent a fiduciary from carrying into effect the
32 provisions of the will, trust or other governing instrument that
33 the fiduciary, in order to implement the bequest or transfer,
34 must distribute assets, including cash, having an aggregate
35 fair market value at the date or dates of distribution
36 amounting to no less than the amount of the pecuniary
37 bequest or transfer as finally determined for federal estate tax
38 purposes.

39 (c) (1) Any fiduciary having discretionary powers under
40 a will or other governing instrument with respect to the
41 selection of assets to be distributed in satisfaction of a
42 pecuniary bequest or transfer in trust is authorized to enter
43 into agreements with the Commissioner of Internal Revenue
44 of the United States of America and other taxing authorities
45 requiring the fiduciary to exercise the fiduciary's discretion
46 so that cash and other properties distributed in satisfaction of
47 the bequest or transfer in trust will be fairly representative of
48 the appreciation or depreciation in value of all property then

49 available for distribution in satisfaction of the bequest or
50 transfer in trust and any such agreement heretofore entered
51 into after April 1, 1964, is hereby validated. The fiduciary is
52 authorized to enter into any other agreement not in conflict
53 with the express terms of the will, trust or other governing
54 instrument that may be necessary or advisable in order to
55 secure for federal estate tax purposes the appropriate marital
56 deduction or other deduction or exemption available under
57 the Internal Revenue laws of the United States of America,
58 and to do and perform all acts incident to that purpose.

59 (2) Unless ordered by a court of competent jurisdiction,
60 the bank or trust company operating a common trust fund, as
61 provided in section six of this article, is not required to render
62 an accounting with regard to the fund, before any fiduciary
63 commissioner but it may, by application to the circuit court
64 of the county in which is located the principal place of
65 business of the bank or trust company, secure the approval of
66 an accounting in the condition the court may fix: *Provided,*
67 That nothing in this section relieves a fiduciary acquiring,
68 holding or disposing of an interest in any common trust fund
69 from making an accounting as required by law with respect
70 of the interest.

71 (d) The fiduciary of any trust created by will, trust or
72 other governing instrument may from time to time without
73 need of court approval to divide the trust or trusts for
74 purposes of the generation skipping transfer tax ("GST") of
75 section 2601 of the Internal Revenue Code of 1986, as in
76 effect on January 1, 2010, or any similar or successor law of
77 like import, or for any other tax, administrative or other
78 purposes. In exercising this authority for inclusion ratio,
79 marital deduction election, reverse qualified terminal interest
80 property election or other GST or other tax purposes, the
81 power shall be exercised in a manner that complies with
82 applicable Internal Revenue Code Treasury Regulations or
83 other requirements for accomplishing the intended purposes.

84 If that division is made for purposes of separating assets with
85 respect to which the federal estate tax marital deduction
86 election is to be made from those as to which the election is
87 not to be made, the division shall be done on a fractional or
88 percentage basis and the assets of the trust or other fund to be
89 divided shall be valued for purposes of the division on the
90 date or dates of division.

§44-5A-6. Restrictions on exercise of power for fiduciary's benefit.

1 (a) A power conferred upon a person in his or her
2 capacity as fiduciary to make discretionary distributions of
3 principal or income to himself or herself or to make
4 discretionary allocations in his or her favor of receipts or
5 expenses between income and principal cannot be exercised
6 by him or her. If the power is conferred on two or more
7 fiduciaries, it may be exercised by the fiduciaries who are not
8 so disqualified. If there is no fiduciary qualified to exercise
9 the power, it may be exercised by a special fiduciary
10 appointed by the court authorized under article fourteen of
11 this chapter, and in accordance with the procedure described
12 therein, to appoint a successor or substitute trustee. Except
13 as provided in subsection (c) of this section this section
14 applies to all trusts now in existence and to all trusts which
15 are created later.

16 (b) Unless either: (1) Mandatory; (2) limited by an
17 ascertainable standard relating to the health, education,
18 support or maintenance of the fiduciary; or (3) exercisable by
19 the fiduciary only in conjunction with another person having
20 a substantial interest in the trust which is adverse to the
21 interest of the fiduciary, a power to make distributions of
22 principal or income is a discretionary power for purposes of
23 this section.

24 (c) This section does not apply to trusts that come into
25 existence or are amended after the effective date of this

26 section which show a clear intent that this section does not
27 apply.

§44-5A-7. Powers of fiduciaries regarding environmental laws.

1 (a) For purposes of this section:

2 (1) “Environmental law” means any federal, state or local
3 law, rule, regulation or ordinance relating to the regulation of
4 hazardous substances or hazardous wastes, air pollution,
5 water pollution and underground storage tanks;

6 (2) “Hazardous substance” means any substance defined
7 as hazardous in the Comprehensive Environmental Response,
8 Compensation and Liability Act (“CERCLA”) [42 U.S.C.
9 9601, et seq. (1980)] as amended and in effect on January 1,
10 2010, and regulations promulgated thereunder;

11 (3) “Hazardous waste” means a waste characterized or
12 listed as hazardous in the Resource, Conservation and
13 Recovery Act (“RCRA”) [42 U.S.C. 6901, et seq. as
14 amended] as in effect on January 1, 2010, and regulations
15 promulgated thereunder;

16 (4) “Fiduciary” means a fiduciary as defined by section
17 one-d, article four-d, chapter thirty-one of this code.

18 (b) In addition to powers, remedies and rights which may
19 be set forth in any will, trust agreement or other document
20 which is the source of authority, a trustee, executor,
21 administrator, guardian or one acting in any other fiduciary
22 capacity, whether an individual, corporation or other entity
23 (“fiduciary”) has the following powers, rights and remedies
24 whether or not set forth in the will, trust agreement or other
25 document which is the source of authority:

26 (1) To inspect property held by the fiduciary including
27 interests in sole proprietorships, partnerships or corporations
28 and any assets owned by any such business enterprise, for the
29 purpose of determining compliance with any environmental
30 law affecting the property and to take necessary or reasonable
31 action, including reporting to the appropriate regulatory
32 authority as may be otherwise required by law, with respect
33 to any actual or potential violation of any environmental law
34 affecting property held by the fiduciary;

35 (2) To take, on behalf of the estate or trust, any action
36 necessary to prevent, abate or otherwise remedy any actual or
37 threatened violation of any environmental law affecting
38 property held by the fiduciary, either before or after the
39 initiation of an enforcement action by any governmental
40 body;

41 (3) To refuse to accept property in trust or estate if the
42 fiduciary determines any property to be donated or conveyed
43 to the trust or estate is contaminated by any hazardous
44 substance or hazardous waste or is being used or has been
45 used for any activity directly or indirectly involving any
46 violation of an environmental law which is reasonably likely
47 to result in liability to the fiduciary: *Provided*, That the
48 refusal does not limit the liability of the trust or estate or its
49 income or principal, for any liability the trust or estate may
50 otherwise have in connection with any environmental law,
51 but only to limit the liability of the fiduciary. Property not
52 accepted into a trust or estate by the fiduciary may revert to
53 the grantor or its successors or pass by the laws of descent
54 and distribution, as may otherwise be provided by law;

55 (4) To settle or compromise at any time any and all
56 claims against the trust or estate which may be asserted by
57 any governmental body or private party involving the alleged
58 violation of any environmental law affecting property held in
59 trust or in an estate;

60 (5) To decline to serve as a fiduciary if the fiduciary
61 reasonably believes that there is or may be a conflict of
62 interest between it and its fiduciary capacity and in its
63 individual capacity because of potential claims or liabilities
64 which may be asserted against it on behalf of the trust or
65 estate because of the type or condition of assets held therein.

66 (c) The fiduciary is entitled to charge the cost of any
67 inspection, review, abatement, response, cleanup or remedial
68 action authorized herein against the income or principal of
69 the trust or estate.

70 (d) A fiduciary is not personally liable to any beneficiary
71 or other party for any decrease in value of assets in trust or in
72 an estate by reason of the fiduciary's compliance with any
73 environmental law, specifically including any reporting
74 requirement under the law.

75 (e) Neither the acceptance by the fiduciary of property
76 nor the failure by the fiduciary to inspect property creates any
77 inference as to whether or not there is or may be any liability
78 under any environmental law with respect to the property.

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-1. Fiduciaries to put money out at interest.

1 (a) Executors, administrators, guardians, curators,
2 committees or trustees may, by direction of the circuit court
3 of the county, where they were appointed or qualified, put out
4 at interest all moneys in their hands which they are or may be
5 lawfully required to retain, whether it belongs to minors,
6 legatees or other person or persons, upon security, and for the
7 length of time, as the court will allow, and if the security so
8 taken, bona fide and without fraud, proves insufficient, it is
9 the loss of the beneficiaries entitled thereto; and it is the duty
10 of the executors, administrators, guardians, curators,

11 committees or trustees, in cases where the estates in their
12 hands may be materially benefited thereby, to make
13 application to the circuit court for direction, and in case they
14 neglect so to do they are accountable for the interest that
15 might have been made thereby; but if no person who may be
16 willing to take the money at interest, giving the security, can
17 be found by the executors, administrators, guardians,
18 curators, committees or trustees, then the executors,
19 administrators, guardians, curators, committees or trustees, in
20 those cases, are accountable for the principal money only,
21 until it can be put out at interest as aforesaid; but in any case
22 where executors, administrators, guardians, curators,
23 committees or trustees use the money of the estates which
24 come to their hands, they are accountable not only for the
25 principal, but also for the interest thereon.

26 (b) This section does not apply to a trust or a trustee.

§44-6-2. In what securities fiduciaries may invest trust funds.

1 Any executor, administrator, guardian, curator,
2 committee, trustee or other fiduciary whose duty it may be to
3 loan or invest money entrusted to him or her as such, may,
4 without any order of any court, invest the same or any part
5 thereof in any of the following securities, and without
6 liability for any loss resulting from investments therein:
7 *Provided*, That except as otherwise provided in article six-c
8 of this chapter, the fiduciary shall exercise the judgment and
9 care under the circumstances then prevailing which persons
10 of prudence, discretion and intelligence exercise in the
11 management of their own affairs, not in regard to speculation,
12 but in regard to the permanent disposition of their funds,
13 considering the probable income as well as the probable
14 safety of their capital:

15 (a) In bonds or interest-bearing notes or obligations of the
16 United States, or those for which the faith of the United

17 States is distinctly pledged to provide for the payment of the
18 principal and interest thereof, including, but not by way of
19 limitation, bonds or debentures issued under the "Farm Credit
20 Act Amendments of 1986" (12 U. S. C. §2001 et. seq.), as
21 amended, debentures issued by the Federal National
22 Mortgage Association, securities issued by the Federal Home
23 Loan Bank System; and in bonds, interest-bearing notes and
24 obligations issued, guaranteed or assumed by the
25 "International Bank for Reconstruction and Development" or
26 by the "Inter-American Development Bank" or by the "Asian
27 Development Bank" or by the "African Development Bank";

28 (b) In bonds or interest-bearing notes or obligations of
29 this state;

30 (c) In bonds of any state of the United States which has
31 not within ten years previous to the making of the investment
32 defaulted in the payment of any part of either principal or
33 interest on any of its bonds issued by authority of the
34 Legislature of the state;

35 (d) In the bonds or interest-bearing notes or obligations
36 of any county, district, school district or independent school
37 district, municipality or any other political division of this
38 state that have been issued pursuant to the authority of any
39 law of this state, since May 9, 1917;

40 (e) In bonds and negotiable notes secured by first
41 mortgage or first trust deed upon improved real estate where
42 the amount secured by the mortgage or trust deed does not at
43 the time of making the same exceed eighty percent of the
44 assessed value, or sixty-six and two-thirds percent of the
45 appraised value as determined by wholly disinterested and
46 independent appraisers, whichever value is the higher, of the
47 real estate covered by the mortgage or trust deed, and when
48 the mortgage or trust deed is accompanied by a satisfactory
49 abstract of title, certificate of title or title insurance policy,

50 showing good title in the mortgagor when making the
51 mortgage or trust deed, and by a fire insurance policy in an
52 old line company with loss, if any, payable to the mortgagee
53 or trustee as his or her interest may appear: *Provided*, That
54 the rate of interest upon the above enumerated securities in
55 this subdivision, in which the investments may be made, may
56 not be less than three and one-half percent per annum nor
57 greater than the maximum rate of interest which the bonds or
58 negotiable notes may bear under applicable law: *Provided*,
59 *however*, That the provisions herein establishing a minimum
60 rate of interest do not apply to investments in force as of the
61 effective date of this section;

62 (f) In savings accounts and time deposits of bank or trust
63 companies to the extent that the deposits are insured by the
64 Federal Deposit Insurance Corporation, or by any other
65 similar federal instrumentality that may be hereafter created,
66 if there is an instrumentality in existence and available for the
67 purpose, or by bonds of solvent surety companies: *Provided*,
68 That the rate of interest upon the savings accounts or time
69 deposits may not be less than the rate paid other depositors in
70 the bank or trust company;

71 (g) In shares of state building and loan associations, or
72 federal savings and loan associations, to the extent that the
73 shares are insured by the Federal Savings and Loan Insurance
74 Corporation, or by any other similar federal instrumentality
75 that may be hereafter created: *Provided*, That there is an
76 instrumentality in existence and available for the purpose, or
77 by bonds of solvent surety companies: *Provided, however*,
78 That the dividend rate upon the shares may not be less than
79 the rate paid to other shareholders in the associations; and

80 (h) In other securities of corporations organized and
81 existing under the laws of the United States, or of the District
82 of Columbia or any state of the United States, including, but
83 not by way of limitation, bonds, debentures, notes, equipment

84 trust obligations or other evidences of indebtedness and
85 shares of common and preferred stocks of the corporations
86 and securities of any open end or closed end management
87 type investment company or investment trust registered under
88 the “Federal Investment Company Act” of 1940, as from time
89 to time amended, which persons of prudence, discretion and
90 intelligence acquire or retain for their own account, as long
91 as:

92 (1) An investment may not be made pursuant to the
93 provisions of this subdivision which, at the time the
94 investment is made, will cause the aggregate market value
95 thereof to exceed fifty percent of the aggregate market value
96 at that time of all of the property of the fund held by the
97 fiduciary. Notwithstanding the aforesaid percentage
98 limitation the cash proceeds of the sale of securities received
99 or purchased by a fiduciary and made eligible by this
100 subdivision may be reinvested in any securities of the type
101 described in this subdivision;

102 (2) Bonds, debentures, notes, equipment trust obligations
103 or other evidence of indebtedness of the corporations may not
104 be purchased under authority of this subdivision unless the
105 obligations, if other than issues of a common carrier subject
106 to the provisions of section twenty-a of the “Interstate
107 Commerce Act”, as amended, are obligations issued,
108 guaranteed or assumed by corporations which have any
109 securities currently registered with the Securities and
110 Exchange Commission; and

111 (3) Common or preferred stocks, other than bank and
112 insurance company stocks, may not be purchased under
113 authority of this subdivision unless currently fully listed and
114 registered upon an exchange registered with the Securities
115 and Exchange Commission as a national securities exchange.
116 A sale or other liquidation of any investment may not be
117 required solely because of any change in the relative market

118 value of those investments made eligible by this subdivision
119 and those made eligible by the preceding subdivisions of this
120 section. In determining the aggregate market value of the
121 property of a fund and the percentage of a fund to be invested
122 under the provisions of this subdivision, a fiduciary may rely
123 upon published market quotations as to those investments for
124 which the quotations are available, and upon such valuations
125 of other investments as in the fiduciary's best judgment seem
126 fair and reasonable according to available information.

127 Trust funds received by executors, administrators,
128 guardians, curators, committees, trustees and other fiduciaries
129 may be kept invested in the securities originally received by
130 them, or if the trust funds originally received were stock or
131 securities of a bank, in shares of stock or other securities (and
132 securities received as distributions in respect thereof) of a
133 holding company subject to the federal Bank Holding
134 Company Act of 1956, as amended, received upon
135 conversion of, or in exchange for, shares of stock or other
136 securities of the bank; unless otherwise ordered by a court
137 having jurisdiction of the matter, as hereinafter provided, or
138 unless the instrument under which the trust was created
139 directs that a change of investment be made, and any such
140 fiduciary is not liable for any loss that may occur by
141 depreciation of the securities.

142 This section does not apply where the instrument creating
143 the trust, or the last will and testament of any testator or any
144 court having jurisdiction of the matter, specially directs in
145 what securities the trust funds shall be invested, and every the
146 court has power specially to direct by order or orders, from
147 time to time, additional securities in which trust funds may be
148 invested, and any investment thereof made in accordance
149 with the special direction is legal, and no executor,
150 administrator, guardian, curator, committee, trustee or other
151 fiduciary may be held for any loss resulting in any such case.

152 This section does not apply to trusts or trustees.

§44-6-11. Application only to executors, administrators, guardians, curators or committees.

1 The provisions of this article apply only to executors,
2 administrators, guardians, curators or committees, as the case
3 may be, and do not apply to or affect trustees who are
4 governed by the provisions of the West Virginia Uniform
5 Prudent Investor Act in article six-c of this chapter and the
6 West Virginia Uniform Trust Code in chapter forty-four-d of
7 this code.

ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.

§44-6C-1. Prudent investor rule.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, a trustee who invests and manages trust assets owes
3 a duty to the beneficiaries of the trust to comply with the
4 prudent investor rule set forth in this article.

5 (b) The prudent investor rule, a default rule, may be
6 expanded, restricted, eliminated or otherwise altered by the
7 provisions of a trust instrument. A trustee is not liable to a
8 beneficiary to the extent that the trustee acted in reasonable
9 reliance on the provisions of the trust instrument.

§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

1 (a) A trustee shall invest and manage trust assets as a
2 prudent investor would, by considering the purposes, terms,
3 distribution requirements and other circumstances of the
4 trust. In satisfying this standard, the trustee shall exercise
5 reasonable care, skill and caution.

6 (b) A trustee's investment and management decisions
7 respecting individual assets must be evaluated not in isolation
8 but in the context of the trust portfolio as a whole and as a

9 part of an overall investment strategy having risk and return
10 objectives reasonably suited to the trust.

11 (c) Among circumstances that a trustee shall consider in
12 investing and managing trust assets are such of the following
13 as are relevant to the trust or its beneficiaries:

14 (1) General economic conditions;

15 (2) The possible effect of inflation or deflation;

16 (3) The expected tax consequences of investment
17 decisions or strategies;

18 (4) The role that each investment or course of action
19 plays within the overall trust portfolio, which may include
20 financial assets, interests in closely held enterprises, tangible
21 and intangible personal property and real property;

22 (5) The expected total return from income and the
23 appreciation of capital;

24 (6) Other resources of the beneficiaries;

25 (7) Needs for liquidity, regularity of income and
26 preservation or appreciation of capital; and

27 (8) An asset's special relationship or special value, if any,
28 to the purposes of the trust or to one or more of the
29 beneficiaries.

30 (d) A trustee shall make a reasonable effort to verify facts
31 relevant to the investment and management of trust assets.

32 (e) A trustee may invest in any kind of property or type
33 of investment consistent with the standards of this article.

34 (f) A trustee who has special skills or expertise, or is
35 named trustee in reliance upon the trustee's representation
36 that the trustee has special skills or expertise, has a duty to
37 use those special skills or expertise.

38 (g)(1) Unless otherwise directed by the terms of the trust
39 instrument, the duties of a trustee of an irrevocable life
40 insurance trust with respect to acquiring or retaining a
41 contract of insurance upon the life of the grantor, or the lives
42 of the grantor and the grantor's spouse, do not include a
43 duty:

44 (A) To determine whether the contract is or remains a
45 proper investment;

46 (B) To exercise policy options available under the
47 contract in the event the policy lapses or is terminated due to
48 failure to pay premiums; or

49 (C) To diversify the contract.

50 (2) A trustee is not liable to the beneficiaries of the trust
51 or to any other party for any loss arising from the absence
52 of those duties upon the trustee.

§44-6C-9. Delegation of investment and management functions.

1 (a) A trustee may delegate investment and management
2 functions that a prudent trustee of comparable skills could
3 properly delegate under the circumstances. The trustee shall
4 exercise reasonable care, skill and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust; and

8 (3) Periodically reviewing the agent’s actions in order to
9 monitor the agent’s performance and compliance with the
10 terms of the delegation.

11 (b) In performing a delegated function, an agent owes a
12 duty to the trust to exercise reasonable care to comply with
13 the terms of the delegation.

14 (c) A trustee who complies with the requirements of
15 subsection (a) of this section is not liable to the beneficiaries
16 or to the trust for the decisions or actions of the agent to
17 whom the function was delegated.

18 (d) By accepting the delegation of a trust function from
19 the trustee of a trust that is subject to the law of this state, an
20 agent submits to the jurisdiction of the courts of this state.

21 (e) The delegating trustee is not responsible for the
22 decisions, actions or inactions of the trustee to whom those
23 duties and powers have been delegated if the delegating
24 trustee has exercised reasonable care, skill and caution in
25 establishing the scope and specific terms of the delegation
26 and in reviewing periodically the performance of the trustee
27 to whom the duties and powers have been delegated and the
28 trustee’s compliance with the scope and specific terms of the
29 delegation.

ARTICLE 7. RESIGNATION OF PERSONAL REPRESENTATIVES AND PROCEDURE UPON RESIGNATION.

§44-7-1. Fiduciary desiring to resign to file petition; summons thereon.

1 A personal representative or curator desiring to resign his
2 or her trust, may file his or her petition for that purpose in the
3 county commission of the county in which he or she was
4 appointed, stating the names of all persons, so far as known

5 by him or her, interested in the estate in his or her hands or
6 under his or her control, and to which his or her duties as
7 fiduciary relate, and if any of them are under disability, or
8 nonresidents of the state; or if there are persons interested in
9 the estate whose names are unknown, all of these facts, and
10 the names of the guardians and committees of the persons
11 under disability, if there are guardians or committees, shall be
12 stated in the petition. Upon the filing of the petition the clerk
13 of the court shall issue a summons against all the persons so
14 named and the guardians and the committees of those under
15 disability, if they have any, and against “the unknown parties
16 in interest,” if any there are, mentioned in the petition, to
17 appear before the court on a day to be named in the
18 summons, which day may be not less than thirty days from
19 the filing of the petition, and answer the petition, and state to
20 the court the reasons, if any they have, why the petition
21 should not be granted. If any of the persons interested reside
22 in another county in this state, the summons as to them shall
23 be directed and sent by mail by the clerk to the sheriff of that
24 county to be served and returned by him or her; and as to the
25 persons named in the petition who reside out of this state, or
26 who cannot by the use of due diligence be found, and as to
27 the unknown parties, an order of publication shall be awarded
28 against them, which shall be published or posted and
29 published, as in cases of appointment and qualification of
30 personal representatives.

**§44-7-4. Application only to personal representatives, curators
or minor guardians.**

1 The provisions of this article apply only to personal
2 representatives, curators and minor guardians, as the case
3 may be, and do not apply to or affect guardians and
4 conservators of an adult protected person who are governed
5 by the provisions of the Guardian and Conservatorship Act
6 in chapter forty-four-a of this code or trustees who are
7 governed by the provisions of the West Virginia Uniform
8 Trust Code in chapter forty-four-d of this code.

CHAPTER 44D. UNIFORM TRUST CODE.**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.****§44D-1-101. Short title.**

1 This chapter may be cited as the “West Virginia Uniform
2 Trust Code.”

§44D-1-102. Scope.

1 This chapter applies to express trusts, charitable or
2 noncharitable, and trusts created pursuant to a statute,
3 judgment, or decree that requires the trust to be administered
4 in the manner of an express trust.

§44D-1-103. Definitions.

1 In this chapter:

2 (a) “Action,” with respect to an act of a trustee, includes
3 a failure to act.

4 (b) “Ascertainable standard” means a standard relating to
5 an individual’s health, education, support or maintenance
6 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1)
7 of the Internal Revenue Code.

8 (c) “Beneficiary” means a person that:

9 (1) Has a present or future beneficial interest in a trust,
10 vested or contingent;

11 (2) In a capacity other than that of trustee, holds a power
12 of appointment over trust property; or

13 (3) A charitable organization that is expressly designated
14 in the terms of the trust instrument to receive distributions.

15 (d) “Charitable trust” means a trust, or portion of a trust,
16 created for a charitable purpose described in subsection (a),
17 section four hundred five, article four of this chapter.

18 (e) “Conservator” means a person appointed by the court
19 to administer the estate and financial affairs of a protected
20 person.

21 (f) “Court” means a court of this state having proper
22 jurisdiction under section two hundred three, article two of
23 this chapter, and venue under section two hundred four of
24 that article.

25 (g) “Current beneficiary” means a beneficiary that, on the
26 date the beneficiary’s qualification is determined, is a
27 distributee or permissible distributee of trust income or
28 principal.

29 (h) “Environmental law” means a federal, state or local
30 law, rule, regulation or ordinance relating to protection of the
31 environment.

32 (i) “Grantor” means a person, including a testator, who
33 creates, or contributes property to a trust. If more than one
34 person creates or contributes property to a trust, each person
35 is a grantor of the portion of the trust property attributable to
36 that person’s contribution except to the extent another person
37 has the power to revoke or withdraw that portion.

38 (j) “Guardian” means a person appointed by the court
39 who is responsible for the personal affairs of a protected
40 person or a parent to make decisions regarding the support,
41 care, education, health and welfare of a minor. The term does
42 not include a guardian ad litem.

43 (k) “Interested person” means heirs, devisees, children,
44 spouses, creditors, beneficiaries and any others having a
45 property right in or claim against a trust or the property in a

46 trust. It also includes persons having priority for
47 appointment as personal representative and other fiduciaries
48 representing interested persons. The meaning as it relates to
49 particular persons may vary from time to time and must be
50 determined according to the particular purposes of, and
51 matter involved in, any proceeding.

52 (l) "Interests of the beneficiaries" means the beneficial
53 interests provided in the terms of the trust.

54 (m) "Internal Revenue Code" or "Internal Revenue Code
55 of 1986" means the Internal Revenue Code of 1986 codified
56 in 26 U.S.C. 1 et seq., as amended and in effect on January 1,
57 2011.

58 (n) "Jurisdiction" with respect to a geographic area,
59 includes a state or country.

60 (o) "Person" means an individual, corporation, business
61 trust, estate, trust, partnership, limited liability company,
62 association, joint venture, unincorporated nonprofit
63 association, charitable organization, government,
64 governmental subdivision, agency or instrumentality, public
65 corporation or any other legal or commercial entity.

66 (p) "Power of withdrawal" means a presently exercisable
67 general power of appointment other than a power:

68 (1) Exercisable by a trustee and limited by an
69 ascertainable standard; or

70 (2) Exercisable by another person only upon consent of
71 the trustee or a person holding an adverse interest.

72 (q) "Property" means anything that may be the subject of
73 ownership, whether real or personal, legal or equitable or any
74 interest therein.

75 (r) "Qualified beneficiary" means a beneficiary who, on
76 the date the beneficiary's qualification is determined:

77 (1) Is a distributee or permissible distributee of trust
78 income or principal;

79 (2) Would be a distributee or permissible distributee of
80 trust income or principal if the interests of the distributees
81 described in subparagraph (A) terminated on that date
82 without causing the trust to terminate; or

83 (3) Would be a distributee or permissible distributee of
84 trust income or principal if the trust terminated on that date.

85 (s) "Revocable," as applied to a trust, means revocable by
86 the grantor without the consent of the trustee or a person
87 holding an adverse interest.

88 (t) "Spendthrift provision" means a term of a trust which
89 restrains both voluntary and involuntary transfer of a
90 beneficiary's interest.

91 (u) "State" means a state of the United States, the District
92 of Columbia, Puerto Rico, the United States Virgin Islands or
93 any territory or insular possession subject to the jurisdiction
94 of the United States. The term includes an Indian tribe or
95 band recognized by federal law or formally acknowledged by
96 a state.

97 (v) "Terms of a trust" means the manifestation of the
98 grantor's intent regarding a trust's provisions as expressed in
99 the trust instrument or as may be established by other
100 evidence that would be admissible in a judicial proceeding.

101 (w) "Trust instrument" means a writing, including a will,
102 executed by the grantor that contains terms of the trust,
103 including any amendments thereto.

104 (x) "Trustee" includes an original, additional, successor
105 trustee, and a cotrustee.

106 (y) "Writing" or "written instrument" does not include an
107 electronic record or electronic signature as provided in
108 chapter 39A of this code.

§44D-1-104. Knowledge.

1 (a) Subject to subsection (b) of this section, a person has
2 knowledge of a fact if the person:

3 (1) Has actual knowledge of it;

4 (2) Has received a notice or notification of it; or

5 (3) From all the facts and circumstances known to the
6 person at the time in question, has reason to know it.

7 (b) An organization that conducts activities through
8 employees has notice or knowledge of a fact involving a trust
9 only from the time the information was received by an
10 employee having responsibility to act for the trust, or would
11 have been brought to the employee's attention if the
12 organization had exercised reasonable diligence. An
13 organization exercises reasonable diligence if it maintains
14 reasonable routines for communicating significant
15 information to the employee having responsibility to act for
16 the trust and there is reasonable compliance with the routines.
17 Reasonable diligence does not require an employee of the
18 organization to communicate information unless the
19 communication is part of the individual's regular duties or
20 the individual knows a matter involving the trust would be
21 materially affected by the information.

§44D-1-105. Default and mandatory rules.

1 (a) Except as otherwise provided in the terms of the trust
2 instrument, this chapter governs the duties and powers of a
3 trustee, relations among trustees, and the rights and interests
4 of a beneficiary.

5 (b) The terms of a trust prevail over any provision of this
6 chapter except:

7 (1) The requirements for creating a trust;

8 (2) The duty of a trustee to act in good faith and in
9 accordance with the terms and purposes of the trust;

10 (3) The requirement that a trust and its terms have a
11 purpose that is lawful, not contrary to public policy, and
12 possible to achieve;

13 (4) The power of the court to modify or terminate a trust
14 under section four hundred ten through four hundred sixteen,
15 article four of this chapter;

16 (5) The effect of a spendthrift provision and the rights of
17 certain creditors and assignees to reach a trust as provided in
18 article five of this chapter;

19 (6) The power of the court under section seven hundred
20 two, article seven of this chapter to require, dispense with, or
21 modify or terminate a bond;

22 (7) The power of the court under subsection (b), section
23 seven hundred eight, article seven of this chapter, to adjust a
24 trustee's compensation specified in the terms of the trust
25 instrument which is unreasonably low or high;

26 (8) The effect of an exculpatory term under section one
27 thousand eight, article ten of this chapter;

28 (9) The rights under sections one thousand ten through
29 one thousand thirteen, article ten of this chapter, of a person
30 other than a trustee or beneficiary;

31 (10) Periods of limitation for commencing a judicial
32 proceeding;

33 (11) The power of the court to take action and exercise
34 jurisdiction as may be necessary in the interests of justice;
35 and

36 (12) The subject-matter jurisdiction of the court and
37 venue for commencing a proceeding as provided in sections
38 two hundred three and two hundred four, article two of this
39 chapter.

§44D-1-106. Common law of trusts; principles of equity.

1 The common law of trusts and principles of equity
2 supplement this chapter, except to the extent modified by this
3 chapter or another statute of this state.

§44D-1-107. Governing law.

1 The meaning and effect of the terms of a trust are
2 determined by:

3 (1) The law of the jurisdiction designated in the terms of
4 the trust instrument, including terms which may provide for
5 change of jurisdiction from time to time, unless the
6 designation of that jurisdiction's law is contrary to a strong
7 public policy of the jurisdiction having the most significant
8 relationship to the matter at issue; or

9 (2) In the absence of a controlling designation in the
10 terms of the trust instrument, the law of the jurisdiction in
11 which the grantor is domiciled when the trust becomes
12 irrevocable.

§44D-1-108. Principal place of administration.

1 (a) Without precluding other means for establishing a
2 sufficient connection with the designated jurisdiction, terms
3 of a trust designating the principal place of administration are
4 valid and controlling if:

5 (1) A trustee's principal place of business is located in or
6 a trustee is a resident of the designated jurisdiction; or

7 (2) All or part of the administration occurs in the
8 designated jurisdiction.

9 (b) Without precluding the right of the court to order,
10 approve, or disapprove a transfer, the trustee, may transfer
11 the trust's principal place of administration to another state or
12 to a jurisdiction outside of the United States that is
13 appropriate to the trust's purposes, its administration and the
14 interests of the beneficiaries.

15 (c) When the proposed transfer of a trust's principal place
16 of administration is to another state or to a jurisdiction
17 outside of the United States, the trustee shall notify the
18 current beneficiaries of a proposed transfer of a trust's
19 principal place of administration not less than sixty days
20 before initiating the transfer. A corporate trustee that
21 maintains a place of business in West Virginia where one or
22 more trust officers are available on a regular basis for
23 personal contact with trust customers and beneficiaries has
24 not transferred its principal place of administration merely
25 because all or a significant portion of the administration of
26 the trust is performed outside West Virginia. The notice of
27 proposed transfer must include:

28 (1) The name of the jurisdiction to which the principal
29 place of administration is to be transferred;

30 (2) The address and telephone number at the new location
31 at which the trustee can be contacted;

32 (3) An explanation of the reasons for the proposed
33 transfer;

34 (4) The date on which the proposed transfer is anticipated
35 to occur; and

36 (5) The date, not less than sixty days after the giving of
37 the notice, by which the current beneficiary must notify the
38 trustee of an objection to the proposed transfer.

39 (d) The authority of a trustee under this section to transfer
40 a trust's principal place of administration to another state or
41 to a jurisdiction outside the United States terminates if a
42 current beneficiary notifies the trustee of an objection to the
43 proposed transfer on or before the date specified in the
44 notice.

45 (e) In connection with a transfer of the trust's principal
46 place of administration, the trustee may transfer some or all
47 of the trust property to a successor trustee designated in the
48 terms of the trust instrument or appointed pursuant to section
49 seven hundred four, article seven of this chapter.

§44D-1-109. Methods and waiver of notice.

1 (a) Notice to a person under this chapter or the sending of
2 a document to a person under this chapter must be
3 accomplished in a manner reasonably suitable under the
4 circumstances and likely to result in receipt of the notice or
5 document. Permissible methods of notice or for sending a
6 document include first-class mail, personal delivery, delivery
7 to the person's last known place of residence or place of
8 business, or a properly directed electronic message.

9 (b) Notice otherwise required under this chapter or a
10 document otherwise required to be sent under this chapter
11 need not be provided to a person whose identity or location
12 is unknown to and not reasonably ascertainable by the
13 trustee.

14 (c) Notice under this chapter or the sending of a
15 document under this chapter may be waived by the person to
16 be notified or sent the document.

17 (d) Notice of a judicial proceeding shall be given as
18 provided in the applicable rules of civil procedure.

§44D-1-110. Others treated as qualified beneficiaries.

1 (a) Whenever notice to qualified or current beneficiaries
2 of a trust is required under this chapter, the trustee shall also
3 give notice to any other beneficiary who has sent the trustee
4 a request for notice.

5 (b) A charitable organization expressly designated to
6 receive distributions under the terms of a charitable trust has
7 the rights of a qualified beneficiary under this chapter.

8 (c) A person appointed to enforce a trust created for the
9 care of an animal or another noncharitable purpose as
10 provided in section four hundred eight or four hundred nine,
11 article four of this chapter has the rights of a qualified
12 beneficiary under this chapter.

§44D-1-111. Nonjudicial settlement agreements.

1 (a) For purposes of this section “interested persons”
2 means persons whose consent would be required in order to
3 achieve a binding settlement were the settlement to be
4 approved by the court.

5 (b) Except as otherwise provided in subsection (c) of this
6 section, interested persons may enter into a binding
7 nonjudicial settlement agreement with respect to any matter
8 involving a trust, including, but not limited to:

9 (1) The interpretation or construction of the terms of the
10 trust;

11 (2) The approval of a trustee's report or accounting or
12 waiver of the preparation of a trustee's report or accounting;

13 (3) Direction to a trustee to refrain from performing a
14 particular act or the grant to a trustee of any necessary or
15 desirable power;

16 (4) The resignation or appointment of a trustee and the
17 determination of a trustee's compensation;

18 (5) Transfer of a trust's principal place of administration;

19 (6) Liability or release from liability of a trustee for an
20 action relating to the trust;

21 (7) Questions relating to the property or an interest in
22 property held as part of a trust;

23 (8) An investment decision, policy, plan or program of
24 the trustee;

25 (9) The grant to a trustee of any necessary or desirable
26 power;

27 (10) The exercise or nonexercise of any power by a
28 trustee;

29 (11) An action or proposed action by or against a trust or
30 trustee;

31 (12) The modification or termination of a trust; and

32 (13) Any other matter concerning the administration of a
33 trust.

34 (c) A nonjudicial settlement agreement is valid only to
35 the extent it does not violate a material purpose of the trust
36 and includes terms and conditions that could be properly
37 approved by the court under this chapter or other applicable
38 law.

39 (d) Any interested person may request the court to
40 approve a nonjudicial settlement agreement, to determine
41 whether the representation as provided in article three of this
42 chapter was adequate, and to determine whether the
43 agreement contains terms and conditions the court could have
44 properly approved.

§44D-1-112. Rules of construction.

1 The rules of construction that apply in this state to the
2 interpretation of and disposition of property by will also
3 apply as appropriate to the interpretation of the terms of a
4 trust and the disposition of the trust property.

ARTICLE 2. JUDICIAL PROCEEDINGS.

§44D-2-201. Role of court in administration of trust.

1 (a) The court may intervene in the administration of a
2 trust to the extent its jurisdiction is invoked by an interested
3 person or as provided by law.

4 (b) A trust is not subject to continuing judicial
5 supervision unless ordered by the court.

6 (c) A judicial proceeding involving a trust may relate to
7 any matter involving the trust's administration, including a
8 request for instructions and an action to declare rights.

§44D-2-202. Jurisdiction over trustee and beneficiary.

1 (a) By accepting the trusteeship of a trust having its
2 principal place of administration in this state or by moving
3 the principal place of administration to this state, the trustee
4 submits personally to the jurisdiction of the courts of this
5 state regarding any matter involving the trust.

6 (b) With respect to their interests in the trust, the
7 beneficiaries of a trust having its principal place of
8 administration in this state are subject to the jurisdiction of
9 the courts of this state regarding any matter involving the
10 trust. By accepting a distribution from such a trust, the
11 recipient submits personally to the jurisdiction of the courts
12 of this state regarding any matter involving the trust.

13 (c) This section does not preclude other methods of
14 obtaining jurisdiction over a trustee, beneficiary or other
15 person receiving property from the trust.

§44D-2-203. Subject-matter jurisdiction.

1 The court has exclusive jurisdiction of proceedings in this
2 state brought by a trustee or beneficiary concerning the
3 administration of a trust.

§44D-2-204. Venue.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, venue for a judicial proceeding involving a trust is in
3 the county of this state in which the trust's principal place of
4 administration is or will be located unless the proceeding is
5 to recover land, determine title to the land or subject it to a
6 debt, determine the county where the land or any part may

7 be, or, if the trust is created by will and the estate is not yet
8 closed, in the county in which the decedent's estate is being
9 administered.

10 (b) If a trust has no trustee, venue for a judicial
11 proceeding for the appointment of a trustee is in a county of
12 this state in which a beneficiary resides, in a county in which
13 any trust property is located, or if the trust is created by will,
14 in the county in which the decedent's estate was or is being
15 administered.

ARTICLE 3. REPRESENTATION.

§44D-3-301. Representation; basic effect.

1 (a) Notice to a person who may represent and bind
2 another person under this chapter has the same effect as if
3 notice were given directly to the other person.

4 (b) The consent of a person who may represent and bind
5 another person under this chapter is binding on the person
6 represented unless the person represented objects to the
7 representation by notifying the trustee or the representative
8 before the consent would otherwise have become effective.

9 (c) Except as otherwise provided in section four hundred
10 eleven, article four of this chapter, and section six hundred
11 two, article six of this chapter, a person who under this article
12 may represent a grantor who lacks capacity may receive
13 notice and give a binding consent on the grantor's behalf.

14 (d) A grantor may not represent and bind a beneficiary
15 under this article with respect to the termination or
16 modification of a trust under subsection (a), section four
17 hundred eleven, article four of this chapter.

§44D-3-302. Representation by holder of general testamentary power of appointment.

1 To the extent there is no conflict of interest between the
2 holder of a general testamentary power of appointment and
3 the persons represented with respect to the particular question
4 or dispute, the holder may represent and bind persons whose
5 interests, as permissible appointees, takers in default, or
6 otherwise, are subject to the power.

§44D-3-303. Representation by fiduciaries and parents.

1 To the extent there is no conflict of interest between the
2 representative and the person represented or among those
3 being represented with respect to a particular question or
4 dispute:

5 (1) A conservator or guardian of the protected person
6 may represent and bind the estate that the fiduciary controls;

7 (2) An agent having authority to act with respect to the
8 particular question or dispute may represent and bind the
9 principal;

10 (3) A trustee may represent and bind the beneficiaries of
11 the trust;

12 (4) A personal representative of a decedent's estate may
13 represent and bind persons interested in the estate;

14 (5) A parent may represent and bind the parent's minor
15 or unborn child if a conservator or guardian for the child has
16 not been appointed; and

17 (6) If a minor or unborn person is not otherwise
18 represented under this section, a grandparent or more remote
19 ancestor may represent and bind that minor or unborn person.

§44D-3-304. Representation by person having substantially identical interest.

1 Unless otherwise represented, a minor, incapacitated or
2 unborn individual, or a person whose identity or location is
3 unknown and not reasonably ascertainable, may be
4 represented by and bound by another person having a
5 substantially identical interest with respect to the particular
6 question or dispute, but only to the extent there is no conflict
7 of interest with respect to the particular question or dispute
8 between the representative and the person represented.

§44D-3-305. Appointment of representative.

1 (a) If the court determines in a judicial proceeding that an
2 interest is not represented under this chapter, or that the
3 otherwise available representation might be inadequate, the
4 court may appoint a representative to receive notice, give
5 consent, and otherwise represent, bind, and act on behalf of
6 a minor, incapacitated or unborn individual, or a person
7 whose identity or location is unknown. A representative may
8 be appointed to represent several persons or interests.

9 (b) A representative may act on behalf of the individual
10 represented with respect to any matter arising under this
11 chapter, whether or not a judicial proceeding concerning the
12 trust is pending.

13 (c) In making decisions, a representative may consider
14 general benefit accruing to the living members of the
15 individual's family.

**ARTICLE 4. CREATION, VALIDITY, MODIFICATION
AND TERMINATION OF TRUST.**

§44D-4-401. Methods of creating trust.

1 (a) A trust may be created by:

2 (1) Transfer of property to another person as trustee
3 during the grantor's lifetime by the grantor or by will or by
4 other disposition taking effect upon the grantor's death;

5 (2) Declaration by the owner of property that the owner
6 holds identifiable property as trustee;

7 (3) Exercise of a power of appointment in favor of a
8 trustee; or

9 (4) An order of the court.

10 (b) During the grantor's lifetime, a trust may also be
11 created by the grantor's agent acting in accordance with
12 authority granted under a durable power of attorney which
13 expressly authorizes the agent to create a trust on the
14 grantor's behalf or which expressly authorizes the agent to
15 fund an existing trust of the grantor on the grantor's behalf.

§44D-4-402. Requirement for creation.

1 (a) Except as created by an order of the court, a trust is
2 created only if:

3 (1) The grantor has capacity to create a trust;

4 (2) The grantor indicates an intention, in writing, to
5 create the trust;

6 (3) The trust has a definite beneficiary or is:

7 (A) A charitable trust;

8 (B) A trust for the care of an animal, as provided in
9 section four hundred eight of this article; or

10 (C) A trust for a noncharitable purpose, as provided in
11 section four hundred nine, article four of this chapter;

12 (4) The trustee has duties to perform; and

13 (5) The same person is not the sole trustee and sole
14 beneficiary.

15 (b) A beneficiary is definite if the beneficiary can be
16 ascertained now or in the future, subject to any applicable
17 rule against perpetuities.

18 (c) A power in a trustee to select a beneficiary from an
19 indefinite class is valid. If the power is not exercised within
20 a reasonable time, the power fails and the property subject to
21 the power passes to the persons who would have taken the
22 property had the power not been conferred.

23 (d) Notwithstanding the foregoing:

24 (1) In accordance with the provisions of section eight,
25 article three of chapter forty-one of this code, a trust is valid
26 regardless of the existence, value or character of the corpus
27 of the trust.

28 (2) The grantor need not have capacity to create a trust if
29 the trust is created in writing during the grantor's lifetime by
30 the grantor's agent acting in accordance with authority
31 granted under a durable power of attorney which expressly
32 authorizes the agent to create a trust on the grantor's behalf.

33 (e) A trust is not invalid or terminated, and title to trust
34 assets is not merged, because the trustee or trustees are the
35 same person or persons as the beneficiaries of the trust.

§44D-4-403. Trusts created in other jurisdictions.

1 A trust not created by will is validly created if its creation
2 complies with the law of the jurisdiction in which the trust
3 instrument was executed, or the law of the jurisdiction in
4 which, at the time of creation:

5 (1) The grantor was domiciled, had a place of abode, or
6 was a national;

7 (2) A trustee was domiciled or had a place of business; or

8 (3) Any trust property was located.

§44D-4-404. Trust purposes.

1 A trust may be created only to the extent its purposes are
2 lawful, not contrary to public policy and possible to achieve.
3 A trust and its terms must be for the benefit of its
4 beneficiaries.

§44D-4-405. Charitable purposes; enforcement.

1 (a) A charitable trust may be created for the relief of
2 poverty, the advancement of education or religion, the
3 promotion of health, governmental or municipal purposes or
4 other purposes the achievement of which is beneficial to the
5 community.

6 (b) If the terms of a charitable trust do not indicate a
7 particular charitable purpose or beneficiary, upon petition by
8 the trustee or a person having a special interest in the trust,
9 the court may select one or more charitable purposes or
10 beneficiaries. The selection must be consistent with the
11 grantor's intention to the extent it can be ascertained.

12 (c) The grantor of a charitable trust, trustee or a person
13 having a special interest in the trust, may maintain a
14 proceeding to enforce the trust.

15 (d) This section is not intended to override the provisions
16 of section four, article one, chapter thirty-five of this code,
17 concerning conveyances, devises, dedications, gifts or
18 bequests to religious organizations and to the extent there is
19 a conflict with that section, this section controls.

§44D-4-406. Creation of trust induced by fraud, duress or undue influence.

1 A trust is void to the extent its creation was induced by
2 fraud, duress or undue influence. As used in this section,
3 “fraud,” “duress” and “undue influence” have the same
4 meanings for trust validity purposes as they have for
5 purposes of determining the validity of a will.

§44D-4-407. Oral trusts unenforceable.

1 Oral trusts are unenforceable in this state.

§44D-4-408. Trust for care of animal.

1 (a) A trust may be created to provide for the care of an
2 animal alive during the grantor’s lifetime. The trust
3 terminates upon the death of the animal or, if the trust was
4 created to provide for the care of more than one animal alive
5 during the grantor’s lifetime, upon the death of the last
6 surviving animal.

7 (b) A trust authorized by this section may be enforced by
8 a person appointed in the terms of the trust instrument or, if
9 no person is so appointed, by a person appointed by the court.
10 A person having an interest in the welfare of the animal may
11 request the court to appoint a person to enforce the trust or to
12 remove a person appointed.

13 (c) Property of a trust authorized by this section may be
14 applied only to its intended use, except to the extent the court
15 determines that the value of the trust property exceeds the
16 amount required for the intended use. Except as otherwise
17 provided in the terms of the trust instrument, property not
18 required for the intended use must be distributed to the
19 grantor, if then living, otherwise to the grantor’s successors
20 in interest.

§44D-4-409. Noncharitable trust without ascertainable beneficiary.

1 Except as otherwise provided in section four hundred
2 eight of this article, or by the provisions of article five-a,
3 chapter thirty-five of this code, or by another statute, the
4 following rules apply:

5 (1) A trust may be created for a noncharitable purpose
6 without a definite or definitely ascertainable beneficiary or
7 for a noncharitable but otherwise valid purpose to be selected
8 by the trustee. The trust may not be enforced for more than
9 the period set forth in section one, article one-a, chapter
10 thirty-six of this code.

11 (2) A trust authorized by this section may be enforced by
12 a person appointed in the terms of the trust instrument or, if
13 no person is so appointed, by a person appointed by the court.

14 (3) Property of a trust authorized by this section may be
15 applied only to its intended use, except to the extent the court
16 determines that the value of the trust property exceeds the
17 amount required for the intended use. Except as otherwise
18 provided in the terms of the trust instrument, property not
19 required for the intended use must be distributed to the
20 grantor, if then living, otherwise to the grantor's successors
21 in interest.

§44D-4-410. Modification or termination of trust; proceedings for approval or disapproval.

1 (a) In addition to the methods of termination prescribed
2 by sections four hundred eleven through four hundred
3 fourteen, article four of this chapter, a trust terminates to the
4 extent the trust is revoked or expires pursuant to its terms, no
5 purpose of the trust remains to be achieved, or the purposes
6 of the trust have become unlawful, contrary to public policy,
7 or impossible to achieve.

8 (b) A proceeding to approve or disapprove a proposed
9 modification or termination under sections four hundred
10 eleven through four hundred sixteen of this article, or trust
11 combination or division under section four hundred
12 seventeen of this article, may be commenced by a trustee or
13 beneficiary, and a proceeding to approve or disapprove a
14 proposed modification or termination under section four
15 hundred eleven of this article may be commenced by the
16 grantor. The grantor of a charitable trust may maintain a
17 proceeding to modify the trust under section four hundred
18 thirteen of this article.

**§44D-4-411. Modification or termination of noncharitable
irrevocable trust by consent.**

1 (a) If, upon petition, the court finds that the grantor and
2 all beneficiaries consent to the modification or termination of
3 a noncharitable irrevocable trust, the court shall approve the
4 modification or termination even if the modification or
5 termination is inconsistent with a material purpose of the
6 trust. A grantor's power to consent to a trust's modification
7 or termination may be exercised by an agent under a power
8 of attorney only to the extent expressly authorized by the
9 power of attorney or the terms of the trust instrument; by the
10 grantor's conservator with the approval of the court
11 supervising the conservatorship if an agent is not so
12 authorized; or by the grantor's guardian with the approval of
13 the court supervising the guardianship if an agent is not so
14 authorized and a conservator has not been appointed.

15 (b) A noncharitable irrevocable trust may be terminated
16 upon consent of all of the beneficiaries if the court concludes
17 that continuance of the trust is not necessary to achieve any
18 material purpose of the trust. A noncharitable irrevocable
19 trust may be modified upon consent of all of the beneficiaries
20 if the court concludes that modification is not inconsistent
21 with a material purpose of the trust.

22 (c) A spendthrift provision in the terms of the trust
23 instrument is presumed to constitute a material purpose of the
24 trust.

25 (d) Upon termination of a trust under subsection (a) or (b)
26 of this section, the trustee shall distribute the trust property as
27 agreed by the beneficiaries.

28 (e) If all of the beneficiaries do not consent to a proposed
29 modification or termination of the trust under subsection (a)
30 or (b) of this section, the modification or termination
31 including any distributions of the trust property, may be
32 approved by the court if the court is satisfied that:

33 (1) If all of the beneficiaries had consented, the trust
34 could have been modified or terminated under this section;
35 and

36 (2) The interests of a beneficiary who does not consent
37 will be adequately protected.

**§44D-4-412. Modification or termination because of
unanticipated circumstances or inability to
administer trust effectively.**

1 (a) The court may modify the administrative or
2 dispositive terms of a trust or terminate the trust if, because
3 of circumstances not anticipated by the grantor, modification
4 or termination will further the purposes of the trust. To the
5 extent practicable, the modification must be made in
6 accordance with the grantor's probable intention.

7 (b) The court may modify the administrative terms of a
8 trust if continuation of the trust on its existing terms would be
9 impracticable or wasteful or impair the trust's administration.

10 (c) Upon termination of a trust under this section, the
11 trustee shall distribute the trust property in a manner
12 consistent with the purposes of the trust.

§44D-4-413. Cy pres.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, if a particular charitable purpose becomes unlawful,
3 impracticable, impossible to achieve, or wasteful:

4 (1) The charitable trust does not fail, in whole or in part;

5 (2) The charitable trust property does not revert to the
6 grantor or the grantor's successors in interest; and

7 (3) Upon petition by a trustee or a person having a special
8 interest in the trust, the court shall apply cy pres to fulfill as
9 nearly as possible the grantor's charitable intention, whether
10 it be general or specific.

11 (b) A provision in the terms of a charitable trust that
12 would result in distribution of the trust property to a
13 noncharitable beneficiary prevails over the power of the court
14 under subsection (a) of this section to apply cy pres to modify
15 or terminate the trust only if, when the provision takes effect:

16 (1) The charitable trust property is to revert to the grantor
17 and the grantor is still living; or

18 (2) Fewer than twenty-one years have elapsed since the
19 date of the trust's creation.

§44D-4-414. Modification or termination of uneconomic trust.

1 (a) After notice to the qualified beneficiaries, the trustee
2 of a trust consisting of a noncharitable trust property having
3 a total value less than \$100,000 may terminate the trust,
4 without the necessity of court approval, if the trustee

5 concludes that the value of the trust property is insufficient to
6 justify the cost of administration.

7 (b) The court may modify or terminate a trust or remove
8 the trustee and appoint a different trustee if it determines that
9 the value of the trust property is insufficient to justify the cost
10 of administration.

11 (c) Upon termination of a trust under this section, the
12 trustee shall distribute the trust property in a manner
13 consistent with the purposes of the trust.

14 (d) This section does not apply to an easement for
15 conservation or preservation.

§44D-4-415. Reformation to correct mistakes.

1 The court may reform the terms of a trust, even if
2 unambiguous, to conform the terms to the grantor's intention
3 if it is proved by preponderance of the evidence that both the
4 grantor's intent and the terms of the trust instrument were
5 affected by a mistake of fact or law, whether in expression or
6 inducement.

§44D-4-416. Modification to achieve grantor's tax objectives.

1 To achieve the grantor's tax objectives, the court may
2 modify the terms of a trust in a manner that is not contrary to
3 the grantor's probable intention. The court may provide that
4 the modification has retroactive effect.

§44D-4-417. Combination and division of trusts.

1 After notice to the qualified beneficiaries, a trustee may
2 combine two or more trusts into a single trust or divide a trust
3 into two or more separate trusts, if the result does not impair
4 rights of any beneficiary or adversely affect achievement of
5 the purposes of the trust.

ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

§44D-5-501. Rights of beneficiary's creditor or assignee.

1 To the extent a beneficiary's interest is not subject to a
2 spendthrift provision, the court may authorize a creditor or
3 assignee of the beneficiary to reach the beneficiary's interest
4 in a trust by execution or other process against the present or
5 future distributions to or for the benefit of the beneficiary.
6 The court may limit the award to relief as appropriate under
7 the circumstances.

§44D-5-502. Spendthrift provision.

1 (a) A spendthrift provision contained in a trust instrument
2 is valid if it contains language substantially to the effect that
3 it restrains both voluntary and involuntary transfers of a
4 beneficiary's interest.

5 (b) A term of a trust instrument providing that the interest
6 of a beneficiary is held subject to a "spendthrift trust," or
7 words of similar import, is sufficient to restrain both
8 voluntary and involuntary transfer of the beneficiary's
9 interest.

10 (c) A beneficiary may not transfer an interest in a trust in
11 violation of a valid spendthrift provision, and, except as
12 otherwise provided in this article, a creditor or assignee of the
13 beneficiary may not reach the interest or a distribution by the
14 trustee before its receipt by the beneficiary.

§44D-5-503. Exceptions to spendthrift provision.

1 (a) In this section, "child" includes any person for whom
2 an order or judgment for child support has been entered in
3 this or another state.

4 (b) A spendthrift provision is unenforceable against:

5 (1) A beneficiary's child, who has a judgment or court
6 order against the beneficiary for child support;

7 (2) A judgment creditor who has provided services for
8 the protection of a beneficiary's interest in the trust; and

9 (3) A claim of this state or the United States to the extent
10 a statute of this state or federal law so provides.

11 (c) A claimant against whom a spendthrift provision
12 cannot be enforced may obtain from a court an order
13 attaching present or future distributions to or for the benefit
14 of the beneficiary. The court may limit the award to such
15 relief as is appropriate under the circumstances.

§44D-5-504. Discretionary trusts; effect of standard.

1 (a) In this section, "child" includes any person for whom
2 an order or judgment for child support has been entered in
3 this or another state.

4 (b) Except as otherwise provided in subsection (c) of this
5 section, whether or not a trust instrument contains a
6 spendthrift provision, a creditor of a beneficiary may not
7 compel a distribution that is subject to the trustee's
8 discretion, even if:

9 (1) The discretion is expressed in the form of a standard
10 of distribution; or

11 (2) The trustee has abused the discretion.

12 (c) To the extent a trustee has not complied with a
13 standard of distribution or has abused a discretion:

14 (1) A distribution may be ordered by the court to satisfy
15 a judgment or court order against the beneficiary for child
16 support of the beneficiary's child; and

17 (2) The court shall direct the trustee to pay to the child,
18 spouse or former spouse such amount as is equitable under
19 the circumstances but not more than the amount the trustee
20 would have been required to distribute to or for the benefit of
21 the beneficiary had the trustee complied with the standard or
22 not abused the discretion.

23 (d) This section does not limit the right of a beneficiary
24 to maintain a judicial proceeding against a trustee for an
25 abuse of discretion or failure to comply with a standard for
26 distribution.

27 (e) A creditor may not reach the interest of a beneficiary
28 who is also a trustee or cotrustee or otherwise compel a
29 distribution, if the trustee's discretion to make distributions
30 for the trustee's own benefit is limited by an ascertainable
31 standard.

§44D-5-505. Creditor's claim against grantor.

1 (a) Whether or not the terms of a trust instrument contain
2 a spendthrift provision, the following rules apply:

3 (1) During the lifetime of the grantor, the property of a
4 revocable trust is subject to claims of the grantor's creditors.

5 (2) During the lifetime of the grantor, with respect to an
6 irrevocable trust, a creditor or assignee of the grantor may
7 reach the maximum amount that can be distributed to or for
8 the grantor's benefit. If a trust has more than one grantor, the
9 amount the creditor or assignee of a particular grantor may
10 reach may not exceed the grantor's interest in the portion of
11 the trust attributable to that grantor's contribution.

12 (3) After the death of a grantor, and subject to the
13 grantor's right to direct the source from which liabilities will
14 be paid, the property of a trust that was revocable at the
15 grantor's death is subject to claims of, to the extent the
16 grantor's probate estate is inadequate to satisfy them:

17 (A) The costs and expenses of administration of the
18 grantor's estate;

19 (B) Reasonable funeral expenses;

20 (C) Debts and taxes with preference under federal law;

21 (D) Unpaid child support which is due and owing at the
22 time of the decedent's death;

23 (E) Debts and taxes with preference under other laws of
24 the State of West Virginia;

25 (F) Reasonable and necessary medical and hospital
26 expenses of the last illness of the decedent, including
27 compensation for persons attending the decedent during his
28 or her last illness; and

29 (G) All other claims.

30 (b) For purposes of this section:

31 (1) During the period the power may be exercised, the
32 holder of a power of withdrawal is treated in the same
33 manner as the grantor of a revocable trust to the extent of the
34 property subject to the power; and

35 (2) Upon the lapse, release or waiver of the power, the
36 holder is treated as the grantor of the trust only to the extent
37 the value of the property affected by the lapse, release or
38 waiver exceeds the greater of the amount specified in Section

39 2041(b)(2), Section 2503(b) or Section 2514(e) of the
40 Internal Revenue Code.

§44D-5-506. Overdue distribution.

1 (a) In this section, “mandatory distribution” means a
2 distribution of income or principal which the trustee is
3 required to make to a beneficiary under the terms of the trust
4 instrument, including a distribution upon termination of the
5 trust. The term does not include a distribution subject to the
6 exercise of the trustee’s discretion even if:

7 (1) The discretion is expressed in the form of a standard
8 of distribution; or

9 (2) The terms of the trust instrument authorizing a
10 distribution couple language of discretion with language of
11 direction.

12 (b) Whether or not a trust contains a spendthrift
13 provision, a creditor or assignee of a beneficiary may reach
14 a mandatory distribution of income or principal, including a
15 distribution upon termination of the trust, if the trustee has
16 not made the distribution to the beneficiary within a
17 reasonable time after the designated distribution date.

§44D-5-507. Personal obligations of trustee.

1 Trust property is not subject to personal obligations of the
2 trustee, even if the trustee becomes insolvent or bankrupt.

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-601. Capacity of grantor of revocable trust.

1 The capacity required to create, amend, revoke or add
2 property to a revocable trust, or to direct the actions of the

3 trustee of a revocable trust, is the same as that required to
4 make a will.

§44D-6-602. Revocation or amendment of revocable trust.

1 (a) Unless the terms of a trust expressly provide that the
2 trust is irrevocable, the grantor may revoke or amend the
3 trust. This subsection does not apply to a trust created under
4 an instrument executed before the effective date of this
5 chapter.

6 (b) Unless the terms of a trust provide otherwise, if a
7 revocable trust is created or funded by more than one grantor:

8 (1) To the extent the trust consists of community
9 property, the trust may be revoked by either spouse acting
10 alone but may be amended only by joint action of both
11 spouses;

12 (2) To the extent the trust consists of property other than
13 community property, each grantor may revoke or amend the
14 trust with regard the portion of the trust property attributable
15 to that grantor's contribution; and

16 (3) Upon the revocation or amendment of the trust by
17 fewer than all of the grantors, the trustee shall promptly
18 notify the other grantors of the revocation or amendment.

19 (c) The grantor may revoke or amend a revocable trust:

20 (1) By substantially complying with a method provided
21 in the terms of the trust instrument; or

22 (2) If the terms of the trust instrument do not provide a
23 method, by any other method manifesting clear and
24 convincing evidence of the grantor's intent.

25 (d) Upon revocation of a revocable trust, the trustee shall
26 deliver the trust property as the grantor directs.

27 (e) A grantor's powers with respect to revocation,
28 amendment, or distribution of trust property may be
29 exercised by an agent under a power of attorney only to the
30 extent expressly authorized by the terms of the trust
31 instrument or the power.

32 (f) A conservator of the grantor or, if no conservator has
33 been appointed, a guardian of the grantor may exercise a
34 grantor's powers with respect to revocation, amendment or
35 distribution of trust property only with the approval of the
36 court supervising the conservatorship or guardianship.

37 (g) A trustee who does not know that a trust has been
38 revoked or amended is not liable to the grantor or grantor's
39 successors in interest for distributions made and other actions
40 taken on the assumption that the trust had not been amended
41 or revoked.

42 (h) No trust which is otherwise irrevocable because the
43 trust instrument expressly provides or states that the trust is
44 irrevocable is or becomes revocable by the grantor because
45 the grantor is the sole beneficiary of the trust.

§44D-6-603. Grantor's powers; powers of withdrawal.

1 (a) While a trust is revocable and the grantor has capacity
2 to revoke the trust, rights of the beneficiaries are subject to
3 the control of, and the duties of the trustee are owed
4 exclusively to, the grantor.

5 (b) During the period the power may be exercised, the
6 holder of a power of withdrawal has the rights of a grantor of
7 a revocable trust under this section to the extent of the
8 property subject to the power.

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

1 (a) (1) An interested person may commence a judicial
2 proceeding to contest the validity of a trust that was
3 revocable at the grantor's death within the earlier of:

4 (A) Two years after the grantor's death; or

5 (B) Six months after the trustee has sent the beneficiary
6 a copy of the trust instrument and a notice informing the
7 beneficiary of the trust's existence, of the trustee's name and
8 address, and of the time allowed for commencing a
9 proceeding.

10 (2) Notwithstanding subdivision (1) of this subsection:

11 (A) If the beneficiary is under the age of eighteen years
12 or is a convict or mentally incapacitated person, the
13 beneficiary has one year after he or she becomes of age or the
14 disability ceases to commence a judicial proceeding; and

15 (B) If the beneficiary resided out of the state at the time
16 the beneficiary received the trust instrument and notice, the
17 beneficiary has one year after receipt thereof to commence
18 the judicial proceeding.

19 (b) Upon the death of the grantor of a trust that was
20 revocable at the grantor's death, the trustee may proceed to
21 distribute the trust property in accordance with the terms of
22 the trust instrument. The trustee is not subject to liability for
23 doing so unless:

24 (1) The trustee knows of a pending judicial proceeding
25 contesting the validity of the trust; or

26 (2) A potential contestant has notified the trustee of a
27 possible judicial proceeding to contest the trust and a judicial

28 proceeding is commenced within sixty days after the
29 contestant sent the notification.

30 (c) A beneficiary of a trust that was revocable at the
31 grantor's death that is determined to have been invalid is
32 liable to return any distribution received.

ARTICLE 7. OFFICE OF THE TRUSTEE.

§44D-7-701. Accepting or declining trusteeship.

1 (a) Except as otherwise provided in subsection (c) of this
2 section, a person designated as trustee accepts the trusteeship:

3 (1) By substantially complying with a method of
4 acceptance provided in the terms of the trust instrument; or

5 (2) If the terms of the trust instrument do not provide a
6 method or the method provided in the terms is not expressly
7 made exclusive, by accepting delivery of the trust property,
8 exercising powers or performing duties as trustee, or
9 otherwise indicating acceptance of the trusteeship including
10 by signing a written instrument so stating.

11 (b) A person designated as trustee who has not yet
12 accepted the trusteeship may reject the trusteeship. A person
13 designated as trustee who does not accept the trusteeship
14 within a reasonable time after knowing of the designation is
15 deemed to have rejected the trusteeship.

16 (c) A person designated as trustee, without accepting the
17 trusteeship, may:

18 (1) Act to preserve the trust property if, within a
19 reasonable time after acting, the person sends a rejection of
20 the trusteeship to the grantor or, if the grantor is dead or lacks
21 capacity, to a qualified beneficiary; and

22 (2) Inspect or investigate trust property to determine
23 potential liability under environmental or other law or for any
24 other proper purpose.

§44D-7-702. Trustee's bond.

1 (a) A trustee shall give bond to secure performance of the
2 trustee's duties only if a bond is required by the terms of the
3 trust instrument or if the court having jurisdiction of the trust
4 finds that a bond is needed to protect the interests of the
5 beneficiaries and the court has not dispensed with the
6 requirement of a bond.

7 (b) The court may specify the amount of a bond, its
8 liabilities and whether sureties are necessary. The court may
9 modify or terminate a bond at any time upon petition by the
10 grantor, if living, a qualified beneficiary, or cotrustee.

11 (c) In accordance with the provisions of section eighteen,
12 article four, chapter thirty-one-a of this code, a regulated
13 financial-service institution authorized to exercise trust
14 powers in this state need not give bond, even if required by
15 the terms of the trust instrument.

§44D-7-703. Cotrustees.

1 (a) Unless otherwise provided in the terms of the trust
2 instrument, cotrustees who are unable to reach a unanimous
3 decision may act by majority decision. Unless otherwise
4 provided by the trust instrument, when a dispute arises
5 among trustees as to the exercise or nonexercise of any of
6 their powers and there is no agreement by a majority of them,
7 the court in its discretion upon petition filed by any of the
8 trustees, the grantor, if living, a qualified beneficiary, or any
9 interested person, may direct the exercise or nonexercise of
10 the power as it considers necessary for the best interest of the
11 trust.

12 (b) If a vacancy occurs in a cotrusteeship, the remaining
13 cotrustees may act for the trust, unless otherwise provided in
14 the terms of the trust instrument.

15 (c) A cotrustee must participate in the performance of a
16 trustee's function unless the cotrustee is unavailable to
17 perform the function because of absence, illness,
18 disqualification under other law, or other temporary
19 incapacity or the cotrustee has properly delegated the
20 performance of the function to another trustee.

21 (d) If a cotrustee is unavailable to perform duties because
22 of absence, illness, disqualification under other law, or other
23 temporary incapacity, and prompt action is necessary to
24 achieve the purposes of the trust or to avoid injury to the trust
25 property, the remaining cotrustee or a majority of the
26 remaining cotrustees may act for the trust.

27 (e) A trustee may delegate to a cotrustee the performance
28 of a function other than a function that the terms of the trust
29 expressly require to be performed by the trustees jointly.
30 Unless a delegation was irrevocable, a trustee may revoke a
31 delegation of a function previously made.

32 (f) Except as otherwise provided in subsection (g) of this
33 section, a trustee who does not join in an action of another
34 trustee is not liable for the action.

35 (g) Each trustee shall exercise reasonable care to:

36 (1) Prevent a cotrustee from committing a serious breach
37 of trust; and

38 (2) Compel a cotrustee to redress a serious breach of
39 trust.

40 (h) A dissenting trustee who joins in an action at the
41 direction of the majority of the trustees and who notifies any

42 cotrustee of the dissent at or before the time of the action is
43 not liable for the action unless the action is a serious breach
44 of trust.

§44D-7-704. Vacancy in trusteeship; appointment of successor.

1 (a) A vacancy in a trusteeship occurs if:

2 (1) A person designated as trustee rejects the trusteeship;

3 (2) A person designated as trustee cannot be identified or
4 does not exist;

5 (3) A trustee resigns;

6 (4) A trustee is disqualified or removed;

7 (5) A trustee dies; or

8 (6) A guardian or conservator is appointed for an
9 individual serving as trustee.

10 (b) If one or more cotrustees remain in office, a vacancy
11 in a trusteeship need not be filled, unless otherwise provided
12 in the terms of the trust instrument. A vacancy in a
13 trusteeship must be filled if the trust has no remaining trustee.

14 (c) Unless otherwise provided in the terms of the trust
15 instrument, a vacancy in a trusteeship of a noncharitable trust
16 that is required to be filled must be filled in the following
17 order of priority:

18 (1) By a person designated in the terms of the trust
19 instrument to act as successor trustee;

20 (2) By a person appointed by unanimous written
21 agreement of the qualified beneficiaries; or

22 (3) By a person appointed by the court having jurisdiction
23 of the trust.

24 (d) Unless otherwise provided, a vacancy in a trusteeship
25 of a charitable trust that is required to be filled shall be filled
26 in the following order of priority:

27 (1) By a person designated in the terms of the trust to act
28 as successor trustee;

29 (2) By a person selected by the charitable organizations
30 expressly designated to receive distributions under the terms
31 of the trust instrument if the Attorney General of West
32 Virginia either concurs in writing to the selection or fails to
33 make a written objection to the selection within ninety days
34 after receiving by certified or registered mail a notice of the
35 selection by the charitable organizations; or

36 (3) By a person appointed by the court having jurisdiction
37 over the trust.

38 (e) Whether or not a vacancy in a trusteeship exists or is
39 required to be filled, the court may upon petition of the
40 grantor, a qualified beneficiary, or a cotrustee appoint an
41 additional trustee or special fiduciary whenever the court
42 considers the appointment necessary for the administration of
43 the trust.

§44D-7-705. Resignation of trustee.

1 (a) Unless otherwise provided in the terms of the trust
2 instrument, a trustee may resign without court approval by
3 giving at least thirty days' notice in writing to the grantor, if
4 living, all of the qualified beneficiaries, and all cotrustees, if
5 any.

6 (b) A trustee may resign with the approval of the court
7 having jurisdiction of the trust upon the filing of a petition for

8 such purpose which joins as respondents the grantor, if
9 living, all of the qualified beneficiaries, and all cotrustees, if
10 any. In approving a resignation, the court may issue orders
11 and impose conditions reasonably necessary for the
12 protection of the trust property.

13 (c) Unless otherwise provided by order of the court, any
14 liability of a resigning trustee or of any sureties on the
15 trustee's bond for acts or omissions of the trustee is not
16 discharged or affected by the trustee's resignation.

§44D-7-706. Removal of trustee.

1 (a) The grantor, a cotrustee or a beneficiary may upon
2 petition request the court to remove a trustee, or a trustee may
3 be removed by the court on its own initiative. In the case of
4 a charitable trust, the Attorney General of West Virginia shall
5 also have standing to petition the court to remove a trustee.

6 (b) The court may remove a trustee if the court finds by
7 a preponderance of the evidence that:

8 (1) The trustee has committed a serious breach of trust;

9 (2) Lack of cooperation among cotrustees substantially
10 impairs the administration of the trust;

11 (3) Because of unfitness, unwillingness or persistent
12 failure of the trustee to administer the trust effectively,
13 removal of the trustee best serves the interests of the
14 beneficiaries; or

15 (4) There has been a substantial change of circumstances
16 or removal is requested by all of the qualified beneficiaries,
17 removal of the trustee best serves the interests of all of the
18 beneficiaries, removal is not inconsistent with a material
19 purpose of the trust, and a suitable cotrustee or successor
20 trustee is available.

21 (c) Pending a final decision on a request to remove a
22 trustee, or in lieu of or in addition to removing a trustee, the
23 court may order appropriate relief under subsection (b),
24 section one thousand one, article ten of this chapter as may be
25 necessary to protect the trust property or the interests of the
26 beneficiaries.

§44D-7-707. Delivery of property by former trustee.

1 (a) Unless a cotrustee remains in office or the court
2 otherwise orders, and until the trust property is delivered to
3 a successor trustee or other person entitled to it, a trustee who
4 has resigned or been removed has the duties of a trustee and
5 the powers necessary to protect the trust property.

6 (b) A trustee who has resigned or been removed shall
7 proceed expeditiously to deliver the trust property within the
8 trustee's possession to the cotrustee, successor trustee or
9 other person entitled to it.

10 (c) Title to all trust property shall be owned and vested in
11 any successor trustee, upon acceptance of the trusteeship,
12 without any conveyance, transfer or assignment by the prior
13 trustee.

§44D-7-708. Compensation of trustee.

1 (a) If the terms of the trust instrument do not specify the
2 trustee's compensation, a trustee is entitled to compensation
3 that is reasonable under the circumstances.

4 (b) If the terms of the trust instrument specify the
5 trustee's compensation, the trustee is entitled to be
6 compensated as specified, but the court may upon petition of
7 the grantor, qualified beneficiary, the trustee or cotrustee, if
8 any, may allow more or less compensation if:

9 (1) The duties of the trustee are substantially different
10 from those contemplated when the trust was created; or

11 (2) The compensation specified by the terms of the trust
12 instrument would be unreasonably low or high.

§44D-7-709. Reimbursement of expenses.

1 (a) A trustee is entitled to be reimbursed out of the trust
2 property, with interest as appropriate, for:

3 (1) Expenses that were properly incurred in the
4 administration of the trust; and

5 (2) To the extent necessary to prevent unjust enrichment
6 of the trust, expenses that were not properly incurred in the
7 administration of the trust.

8 (b) An advance by the trustee of money for the protection
9 of the trust gives rise to a lien against trust property to secure
10 reimbursement with reasonable interest.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§44D-8-801. Duty to administer trust.

1 Upon acceptance of a trusteeship, the trustee shall
2 administer the trust and invest the trust assets in good faith,
3 in accordance with its terms and purposes and the interests of
4 the beneficiaries, and in accordance with this chapter. In
5 administering, managing and investing trust assets, the
6 trustee shall comply with the provisions of the Uniform
7 Prudent Investor Act in article six-c, chapter forty-four of this
8 code, and the Uniform Principal and Income Act in chapter
9 forty-four-b of this code.

§44D-8-802. Duty of loyalty.

1 (a) A trustee shall administer the trust solely in the
2 interests of the beneficiaries.

3 (b) Subject to the rights of persons dealing with or
4 assisting the trustee as provided in section one thousand
5 twelve, article ten of this chapter, a sale, encumbrance or
6 other transaction involving the investment or management of
7 trust property entered into by the trustee for the trustee's own
8 personal account or which is otherwise affected by a conflict
9 between the trustee's fiduciary and personal interests is
10 voidable by a beneficiary affected by the transaction unless:

11 (1) The transaction was authorized by the terms of the
12 trust instrument;

13 (2) The transaction was approved by the court having
14 jurisdiction over the trust;

15 (3) The beneficiary did not commence a judicial
16 proceeding within the time allowed by section one thousand
17 five, article ten of this chapter;

18 (4) The beneficiary consented to the trustee's conduct,
19 ratified the transaction or released the trustee in compliance
20 with section one thousand nine, article ten of this chapter; or

21 (5) The transaction involves a contract entered into or
22 claim acquired by the trustee before the person became or
23 contemplated becoming trustee.

24 (c) A sale, encumbrance or other transaction involving
25 the investment or management of trust property is presumed
26 to be affected by a conflict between personal and fiduciary
27 interests if it is entered into by the trustee with:

28 (1) The trustee's spouse;

29 (2) The trustee's descendants, siblings, parents or their
30 spouses;

31 (3) An agent or attorney of the trustee; or

32 (4) A corporation or other person or enterprise in which
33 the trustee, or a person that owns a significant interest in the
34 trustee, has an interest that might affect the trustee's best
35 judgment.

36 (d) A transaction between a trustee and a beneficiary that
37 does not concern trust property but that occurs during the
38 existence of the trust or while the trustee retains significant
39 influence over the beneficiary and from which the trustee
40 obtains an advantage beyond the normal commercial
41 advantage from such transaction is voidable by the
42 beneficiary unless the trustee establishes that the transaction
43 was fair to the beneficiary.

44 (e) A transaction not concerning trust property in which
45 the trustee engages in the trustee's individual capacity
46 involves a conflict between personal and fiduciary interests
47 if the transaction concerns an opportunity properly belonging
48 to the trust.

49 (f) An investment by a trustee in securities of an
50 investment company or investment trust, mutual fund or
51 other investment or financial product to which the trustee, or
52 its affiliate, provides services in a capacity other than as
53 trustee is not presumed to be affected by a conflict between
54 personal and fiduciary interests if the investment otherwise
55 complies with the Uniform Prudent Investor Act in article
56 six-c, chapter forty-four of this code. In addition to its
57 compensation for acting as trustee, the trustee may be
58 compensated by the investment company, investment trust,
59 mutual fund or other investment or financial product, or by
60 the affiliated entity sponsoring, selling or providing the
61 service, and the compensation may be in addition to the

62 compensation the trustee is receiving as a trustee if the trustee
63 notifies the persons entitled to receive a copy of the trustee's
64 annual report as provided hereunder of the rate and method
65 by which that compensation was determined and of any
66 subsequent changes to the rate or method of compensation.

67 (g) In voting shares of stock or in exercising powers of
68 control over similar interests in other forms of enterprise, the
69 trustee shall act in the best interests of the beneficiaries. If
70 the trust is the sole owner of a corporation or other form of
71 enterprise, the trustee shall elect or appoint directors or other
72 managers who will manage the corporation or enterprise in
73 the best interests of the beneficiaries.

74 (h) This section does not preclude the following
75 transactions, if fair to the beneficiaries:

76 (1) An agreement between a trustee and a beneficiary
77 relating to the appointment or compensation of the trustee;

78 (2) Payment of reasonable compensation to the trustee;

79 (3) A transaction between a trust and another trust,
80 decedent's estate or conservatorship of which the trustee is a
81 fiduciary or in which a beneficiary has an interest;

82 (4) A deposit of trust money in a regulated financial
83 service institution operated by the trustee; or

84 (5) An advance by the trustee of money for the protection
85 of the trust.

86 (i) The court having jurisdiction over the trust may
87 appoint a special fiduciary to make a decision with respect to
88 any proposed transaction that might violate this section if
89 entered into by the trustee.

§44D-8-803. Impartiality.

1 If a trust has two or more beneficiaries, the trustee shall
2 act impartially in investing, managing and distributing the
3 trust property, giving due regard to the beneficiaries'
4 respective interests.

§44D-8-804. Prudent administration.

1 A trustee shall administer the trust as a prudent person
2 would, by considering the purposes, terms, distributional
3 requirements and other circumstances of the trust. In
4 satisfying this standard, the trustee shall exercise reasonable
5 care, skill and caution.

§44D-8-805. Costs of administration.

1 In administering a trust, the trustee may incur only costs
2 that are reasonable in relation to the trust property, the
3 purposes of the trust and the skills of the trustee.

§44D-8-806. Trustee's skills.

1 A trustee who has special skills or expertise, or is named
2 trustee in reliance upon the trustee's representation that the
3 trustee has special skills or expertise, shall use those special
4 skills or expertise.

§44D-8-807. Delegation by trustee.

1 (a) A trustee may delegate duties and powers that a
2 prudent trustee of comparable skills could properly delegate
3 under the circumstances. The trustee shall exercise
4 reasonable care, skill, and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust
8 instrument; and

9 (3) Periodically reviewing the agent's actions in order to
10 monitor the agent's performance and compliance with the
11 terms of the delegation.

12 (b) In performing a delegated function, an agent owes a
13 duty to the trust to exercise reasonable care to comply with
14 the terms of the delegation.

15 (c) A trustee who complies with subsection (a) of this
16 section is not liable to the beneficiaries or to the trust for an
17 action of the agent to whom the function was delegated.

18 (d) By accepting a delegation of powers or duties from
19 the trustee of a trust that is subject to the law of this state, an
20 agent submits to the jurisdiction of the courts of this state.

21 (e) The delegating trustee is not responsible for the
22 decisions, actions or inactions of the trustee to whom those
23 duties and powers have been delegated if the delegating
24 trustee has exercised reasonable care, skill and caution in
25 establishing the scope and specific terms of the delegation
26 and in reviewing periodically the performance of the trustee
27 to whom the duties and powers have been delegated and the
28 trustee's compliance with the scope and specific terms of the
29 delegation.

§44D-8-808. Powers to direct.

1 (a) While a trust is revocable, the trustee may follow a
2 direction of the grantor that is contrary to the terms of the
3 trust instrument.

4 (b) If the terms of a trust instrument confer upon a person
5 other than the grantor of a revocable trust power to direct
6 certain actions of the trustee, the trustee shall act in
7 accordance with an exercise of the power unless the
8 attempted exercise is manifestly contrary to the terms of the
9 trust instrument or the trustee knows the attempted exercise

10 would constitute a serious breach of a fiduciary duty that the
11 person holding the power owes to the beneficiaries of the
12 trust.

13 (c) The terms of a trust instrument may confer upon a
14 trustee or other person a power to direct the modification or
15 termination of the trust.

16 (d) A person, other than a beneficiary, who holds a power
17 to direct is presumptively a fiduciary who, as such, is
18 required to act in good faith with regard to the purposes of
19 the trust and the interests of the beneficiaries. The holder of
20 a power to direct is liable for any loss that results from the
21 holder's breach of a fiduciary duty.

§44D-8-809. Control and protection of trust property.

1 A trustee shall take reasonable steps to take control of
2 and protect the trust property.

§44D-8-810. Recordkeeping and identification of trust property.

1 (a) A trustee shall keep adequate records of the
2 administration of the trust.

3 (b) A trustee shall keep trust property separate from the
4 trustee's own property.

5 (c) Except as otherwise provided in subsection (d) of this
6 section, a trustee shall cause the trust property to be
7 designated so that the interest of the trust, to the extent
8 feasible, appears in records maintained by a party other than
9 a trustee or beneficiary.

10 (d) If the trustee maintains records clearly indicating the
11 respective interests, a trustee may invest as a whole the
12 property of two or more separate trusts.

§44D-8-811. Enforcement and defense of claims.

1 A trustee shall take reasonable steps to enforce claims of
2 the trust and to defend claims against the trust.

§44D-8-812. Collecting trust property.

1 A trustee shall take reasonable steps to compel a former
2 trustee or other person to deliver trust property to the trustee,
3 and to redress a breach of trust known to the trustee to have
4 been committed by a former trustee.

§44D-8-813. Duty to inform and report.

1 (a) A trustee shall keep the current beneficiaries of the
2 trust reasonably informed about the administration of the
3 trust and of the material facts necessary for them to protect
4 their interests. Unless unreasonable under the circumstances,
5 a trustee shall within a reasonable time respond to a
6 beneficiary's request for information related to the
7 administration of the trust.

8 (b) A trustee:

9 (1) Upon request of a beneficiary, shall within a
10 reasonable time furnish to the beneficiary a copy of the trust
11 instrument;

12 (2) Within sixty days after accepting a trusteeship, shall
13 notify the qualified beneficiaries of the acceptance and of the
14 trustee's name, address and telephone number;

15 (3) Within sixty days after the date the trustee acquires
16 knowledge of the creation of an irrevocable trust, or the date
17 the trustee acquires knowledge that a formerly revocable trust
18 has become irrevocable, whether by the death of the grantor
19 or otherwise, shall notify the qualified beneficiaries of the
20 trust's existence, of the identity of the grantor or grantors, of

21 the right to request a copy of the trust instrument, and of the
22 right to a trustee's report as provided in subsection (c) of this
23 section; and

24 (4) Shall notify the qualified beneficiaries within a
25 reasonable time in advance of any change in the method or
26 rate of the trustee's compensation.

27 (c) A trustee shall send to the distributees or permissible
28 distributees of trust income or principal, and to other
29 qualified or nonqualified beneficiaries who request it, at least
30 annually and at the termination of the trust, a report of the
31 trust property, liabilities, receipts, and disbursements,
32 including the source and amount of the trustee's
33 compensation, a listing of the trust assets and, if feasible,
34 their respective market values. Upon a vacancy in a
35 trusteeship, unless a cotrustee remains in office, a report shall
36 be sent to the qualified beneficiaries by the former trustee. A
37 personal representative, conservator or guardian is
38 responsible for sending the qualified beneficiaries a report on
39 behalf of a deceased or incapacitated trustee.

40 (d) A beneficiary may waive the right to a trustee's report
41 or other information otherwise required to be furnished under
42 this section. A beneficiary, with respect to future reports and
43 other information, may withdraw a waiver previously given.

44 (e) Subdivisions (2) and (3), subsection (b) of this section
45 do not apply to a trustee who accepts a trusteeship before the
46 effective date of this chapter, to an irrevocable trust created
47 before the effective date of this chapter, or to a revocable
48 trust that becomes irrevocable before the effective date of this
49 chapter.

§44D-8-814. Discretionary powers; tax savings.

1 (a) Notwithstanding the breadth of discretion granted to
2 a trustee in the terms of the trust instrument, including the use

3 of such terms as “absolute,” “sole” or “uncontrolled,” the
4 trustee shall exercise a discretionary power in good faith and
5 in accordance with the general and specific terms and
6 purposes of the trust and the interests of the beneficiaries.

7 (b) Subject to subsection (d) of this section, and unless
8 the terms of the trust instrument expressly indicate that a rule
9 in this subsection does not apply:

10 (1) A person other than a grantor who is a beneficiary and
11 trustee of a trust that confers on the trustee a power to make
12 discretionary distributions to or for the trustee’s personal
13 benefit may exercise the power only in accordance with an
14 ascertainable standard; and

15 (2) A trustee may not exercise a power to make
16 discretionary distributions to satisfy a legal obligation of
17 support that the trustee personally owes another person.

18 (c) A power whose exercise is limited or prohibited by
19 subsection (b) of this section may be exercised by a majority
20 of the remaining trustees whose exercise of the power is not
21 so limited or prohibited. If the power of all trustees is so
22 limited or prohibited, the court having jurisdiction may
23 appoint a special fiduciary with authority to exercise the
24 power.

25 (d) Subsection (b) of this section does not apply to:

26 (1) A power held by the grantor’s spouse who is the
27 trustee of a trust for which a marital deduction, as defined in
28 Section 2056(b)(5) or Section 2523(e) of the Internal
29 Revenue Code;

30 (2) Any trust during any period that the trust may be
31 revoked or amended by its grantor; or

32 (3) A trust if contributions to the trust qualify for the
33 annual exclusion under Section 2503(c) of the Internal
34 Revenue Code.

§44D-8-815. General powers of trustee.

1 (a) A trustee, without authorization by the court having
2 jurisdiction, may exercise:

3 (1) Powers conferred by the terms of the trust instrument;
4 or

5 (2) Except as limited by the terms of the trust instrument:

6 (A) All powers over the trust property which an
7 unmarried competent owner has over individually owned
8 property;

9 (B) Any other powers appropriate to achieve the proper
10 investment, management and distribution of the trust
11 property; and

12 (C) Any other powers conferred by this code.

13 (b) The exercise of a power is subject to the fiduciary
14 duties prescribed by this article.

§44D-8-816. Specific powers of trustee.

1 Without limiting the authority conferred by section eight
2 hundred fifteen of this article, a trustee has the powers
3 enumerated in the provisions of section three, article five-a,
4 chapter forty-four of this code.

§44D-8-817. Distribution upon termination.

1 (a) Upon termination or partial termination of a trust, the
2 trustee may send to the beneficiaries a proposal for

3 distribution. The right of any beneficiary to object to the
4 proposed distribution terminates if the beneficiary does not
5 notify the trustee of an objection within sixty days after the
6 proposal was sent but only if the proposal informed the
7 beneficiary of the right to object and of the time allowed for
8 objection.

9 (b) Upon the occurrence of an event terminating or
10 partially terminating a trust, the trustee shall proceed
11 expeditiously to distribute the trust property to the persons
12 entitled to it, subject to the right of the trustee to retain a
13 reasonable reserve for the payment of debts, expenses and
14 taxes.

15 (c) A release by a beneficiary of a trustee from liability
16 for breach of trust is invalid to the extent:

17 (1) It was induced by improper conduct of the trustee; or

18 (2) The beneficiary, at the time of the release, did not
19 know of the beneficiary's rights or of the material facts
20 relating to the breach.

ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT.

§44D-9-901. Uniform Prudent Investor Act.

1 The Uniform Prudent Investor Act is contained in article
2 six-c, chapter forty-four of this code.

ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

§44D-10-1001. Remedies for breach of trust.

1 (a) A violation by a trustee of a duty the trustee owes to
2 a beneficiary is a breach of trust.

3 (b) To remedy a breach of trust that has occurred or may
4 occur, the court may:

5 (1) Compel the trustee to perform the trustee's duties;

6 (2) Enjoin the trustee from committing a breach of trust;

7 (3) Compel the trustee to redress a breach of trust by
8 paying money, restoring property or other means;

9 (4) Order a trustee to account;

10 (5) Appoint a special fiduciary to take possession of the
11 trust property and administer the trust in accordance with the
12 limitations and directions as ordered by the court;

13 (6) Suspend the trustee;

14 (7) Remove the trustee as provided in section seven
15 hundred six, article seven of this chapter;

16 (8) Reduce or deny compensation to the trustee;

17 (9) Subject to section one thousand twelve of this article,
18 void an act of the trustee, impose a lien or a constructive trust
19 on trust property or trace trust property wrongfully disposed
20 of and recover the property or its proceeds; or

21 (10) Order any other appropriate relief.

§44D-10-1002. Damages for breach of trust.

1 (a) A trustee who commits a breach of trust is liable to
2 the beneficiaries affected for the greater of:

3 (1) The amount required to restore the value of the trust
4 property and trust distributions to what they would have been
5 had the breach not occurred; or

6 (2) The profit the trustee made by reason of the breach.

7 (b) Except as otherwise provided in this subsection, if
8 more than one trustee is liable to the beneficiaries for a
9 breach of trust, a trustee is entitled to contribution from the
10 other trustee or trustees. A trustee is not entitled to
11 contribution if the trustee was substantially more at fault than
12 another trustee or if the trustee committed the breach of trust
13 in bad faith or with reckless indifference to the purposes of
14 the trust or the interests of the beneficiaries. A trustee who
15 received a benefit from the breach of trust is not entitled to
16 contribution from another trustee to the extent of the benefit
17 received.

§44D-10-1003. Damages in absence of breach.

1 Absent a breach of trust, a trustee is not liable to a
2 beneficiary for a loss or depreciation in the value of trust
3 property or for not having made a profit.

§44D-10-1004. Attorney's fees and costs.

1 In a judicial proceeding involving the administration of
2 a trust, the court, as justice and equity may require, may
3 award costs and expenses, including reasonable attorney's
4 fees, to any party, to be paid by another party or from the
5 trust that is the subject of the controversy.

§44D-10-1005. Limitation of action against trustee.

1 (a) A beneficiary may not commence a proceeding
2 against a trustee for breach of trust more than one year after
3 the date the beneficiary or a representative of the beneficiary
4 was sent a report that adequately disclosed the existence of a
5 potential claim for breach of trust and informed the
6 beneficiary of the time allowed for commencing a
7 proceeding.

8 (b) A report adequately discloses the existence of a
9 potential claim for breach of trust if it provides sufficient
10 information so that the beneficiary or representative of the
11 beneficiary knows of the potential claim or should know of
12 the existence of the potential claim.

13 (c) If subsection (a) of this section does not apply, a
14 judicial proceeding by a beneficiary against a trustee for
15 breach of trust must be commenced within five years after the
16 first to occur of:

17 (1) The removal, resignation or death of the trustee;

18 (2) The termination of the beneficiary's interest in the
19 trust;

20 (3) The termination of the trust; or

21 (4) The time when the beneficiary knew or should have
22 known of the breach of trust.

§44D-10-1006. Reliance on trust instrument.

1 A trustee who acts in reasonable reliance on the terms of
2 the trust instrument as expressed in the trust instrument is not
3 liable to a beneficiary for a breach of trust to the extent the
4 breach resulted from the reliance.

§44D-10-1007. Event affecting administration or distribution.

1 If the happening of an event, including, but not limited to,
2 marriage, divorce, performance of educational requirements,
3 attaining a specific age or death, affects the administration or
4 distribution of a trust, a trustee who has exercised reasonable
5 care to ascertain the happening of the event is not liable for
6 a loss resulting from the trustee's lack of knowledge.

§44D-10-1008. Exculpation of trustee.

1 (a) A term of a trust instrument relieving a trustee of
2 liability for breach of trust is unenforceable to the extent that
3 it:

4 (1) Relieves the trustee of liability for breach of trust
5 committed in bad faith or with reckless indifference to the
6 purposes of the trust or the interests of the beneficiaries; or

7 (2) Was inserted as the result of an abuse by the trustee
8 of a fiduciary or confidential relationship to the grantor.

9 (b) An exculpatory term drafted or caused to be drafted
10 by the trustee is invalid as an abuse of a fiduciary or
11 confidential relationship unless:

12 (1) The trustee proves that the exculpatory term is fair
13 under the circumstances and that its existence and contents
14 were adequately communicated to the grantor; or

15 (2) The grantor was represented by an attorney not
16 employed by the trustee with respect to the trust and the
17 attorney provided independent legal advice.

§44D-10-1009. Beneficiary's consent, release or ratification.

1 (a) A trustee is not liable to a beneficiary for breach of
2 trust if the beneficiary, while having capacity, consented to
3 the conduct constituting the breach, released the trustee from
4 liability for the breach, or ratified the transaction constituting
5 the breach, unless:

6 (1) The consent, release or ratification of the beneficiary
7 was induced by improper conduct of the trustee; or

8 (2) At the time of the consent, release or ratification, the
9 beneficiary did not know of the beneficiary's rights or of the
10 material facts relating to the breach.

11 (b) A beneficiary is also bound to the extent an approval
12 is given by a person authorized to represent the beneficiary
13 as provided in article three of this chapter.

§44D-10-1010. Limitation on personal liability of trustee.

1 (a) Except as otherwise provided in the contract, a trustee
2 is not personally liable on a contract properly entered into in
3 the trustee's fiduciary capacity in the course of administering
4 the trust if the trustee in the contract disclosed the fiduciary
5 capacity.

6 (b) A trustee is personally liable for torts committed in
7 the course of administering a trust, or for obligations arising
8 from ownership or control of trust property, including
9 liability for violation of environmental law, only if the trustee
10 is personally at fault.

11 (c) A claim based on a contract entered into by a trustee
12 in the trustee's fiduciary capacity, on an obligation arising
13 from ownership or control of trust property, or on a tort
14 committed in the course of administering a trust, may be
15 asserted in a judicial proceeding against the trustee in the
16 trustee's fiduciary capacity, whether or not the trustee is
17 personally liable for the claim.

§44D-10-1011. Interest as general partner.

1 (a) Except as otherwise provided in subsection (c) of this
2 section or unless personal liability is imposed in the contract,
3 a trustee who holds an interest as a general partner in a
4 general or limited partnership is not personally liable on a
5 contract entered into by the partnership after the trust's

6 acquisition of the interest if the fiduciary capacity was
7 disclosed in the contract. The requirement of disclosure in the
8 contract is satisfied if the trustee signs the contract, or signs
9 another writing which is contemporaneously delivered to the
10 other parties to the contract, in a manner that clearly
11 evidences that the trustee executed the contract in a fiduciary
12 capacity.

13 (b) Except as otherwise provided in subsection (c) of this
14 section, a trustee who holds an interest as a general partner is
15 not personally liable for torts committed by the partnership
16 or for obligations arising from ownership or control of the
17 interest unless the trustee is personally at fault.

18 (c) The immunity provided by this section does not apply
19 if an interest in the partnership is held by the trustee in a
20 capacity other than that of trustee or is held by the trustee's
21 spouse or one or more of the trustee's descendants, siblings
22 or parents or the spouse of any of them.

23 (d) If the trustee of a revocable trust holds an interest as
24 a general partner, the grantor is personally liable for contracts
25 and other obligations of the partnership as if the grantor were
26 a general partner.

§44D-10-1012. Protection of person dealing with trustee.

1 (a) A person other than a beneficiary who in good faith
2 assists a trustee, or who in good faith and for value deals with
3 a trustee, without knowledge that the trustee is exceeding or
4 improperly exercising the trustee's powers is protected from
5 liability as if the trustee properly exercised the power.

6 (b) A person other than a beneficiary who in good faith
7 deals with a trustee is not required to inquire into the extent
8 of the trustee's powers or the propriety of their exercise.

9 (c) A person who in good faith delivers assets to a trustee
10 need not ensure their proper application.

11 (d) A person other than a beneficiary who in good faith
12 assists a former trustee, or who in good faith and for value
13 deals with a former trustee, without knowledge that the
14 trusteeship has terminated is protected from liability as if the
15 former trustee were still a trustee.

16 (e) Comparable protective provisions of other laws
17 relating to commercial transactions or transfer of securities
18 by fiduciaries prevail over the protection provided by this
19 section.

§44D-10-1013. Certification of trust.

1 (a) Instead of furnishing a copy of the trust instrument to
2 a person other than a beneficiary, the trustee may furnish to
3 the person a certification of trust containing the following
4 information:

5 (1) That the trust exists and the date the trust instrument
6 was executed;

7 (2) The identity of the grantor;

8 (3) The identity and address of the currently acting
9 trustee;

10 (4) The powers of the trustee;

11 (5) The revocability or irrevocability of the trust and the
12 identity of any person holding a power to revoke the trust;

13 (6) The authority of cotrustees to sign or otherwise
14 authenticate and whether all or less than all are required in
15 order to exercise powers of the trustee;

16 (7) The trust's taxpayer identification number; and

17 (8) The manner of taking title to trust property.

18 (b) A certification of trust may be signed or otherwise
19 authenticated by any trustee.

20 (c) A certification of trust must state that the trust has not
21 been revoked, modified or amended in any manner that
22 would cause the representations contained in the certification
23 of trust to be incorrect.

24 (d) A certification of trust need not contain the
25 dispositive terms of a trust.

26 (e) A recipient of a certification of trust may require the
27 trustee to furnish copies of those excerpts from the original
28 trust instrument and later amendments which designate the
29 trustee and confer upon the trustee the power to act in the
30 pending transaction.

31 (f) A person who acts in reliance upon a certification of
32 trust without knowledge that the representations contained in
33 the certification are incorrect is not liable to any person for so
34 acting and may assume without inquiry the existence of the
35 facts contained in the certification. Knowledge of the terms
36 of the trust instrument may not be inferred solely from the
37 fact that a copy of all or part of the trust instrument is held by
38 the person relying upon the certification.

39 (g) A person who in good faith enters into a transaction
40 in reliance upon a certification of trust may enforce the
41 transaction against the trust property as if the representations
42 contained in the certification were correct.

43 (h) A person making a demand for the trust instrument in
44 addition to a certification of trust or excerpts is liable for
45 damages if the court having jurisdiction over the trust

46 determines that the person did not act in good faith in
47 demanding the trust instrument.

48 (i) This section does not limit the right of a person to
49 obtain a copy of the trust instrument in a judicial proceeding
50 concerning the trust.

51 (j) Nothing in this section expands, limits or otherwise
52 affects the provisions contained in section four-a, article one,
53 chapter thirty-six of this code pertaining to memoranda of
54 trust.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

§44D-11-1101. Uniformity of application and construction.

1 In applying and construing this chapter, consideration
2 shall be given to the need to promote uniformity of the law
3 with respect to its subject matter among states that enact it.

§44D-11-1102. Electronic records and signatures.

1 The provisions of this chapter governing the legal effect,
2 validity or enforceability of electronic records or electronic
3 signatures, and of contracts formed or performed with the use
4 of the records or signatures, conform to the requirements of
5 Section 102 of the Electronic Signatures in Global and
6 National Commerce Act (15 U.S.C. § 7002) and supersede,
7 modify, and limit the requirements of the Electronic
8 Signatures in Global and National Commerce Act.

§44D-11-1103. Severability clause.

1 If any provision of this chapter or its application to any
2 person or circumstances is held invalid, the invalidity does
3 not affect other provisions or applications of this chapter
4 which can be given effect without the invalid provision or

5 application, and to this end the provisions of this chapter are
6 severable.

§44D-11-1104. Effective date.

1 This chapter takes effect on July 1, 2011.

§44D-11-1105. Application to existing relationships.

1 (a) Except as otherwise provided in this chapter:

2 (1) This chapter applies to all trusts created before, on, or
3 after July 1, 2011;

4 (2) This chapter applies to all judicial proceedings
5 concerning trusts commenced on or after July 1, 2011;

6 (3) This chapter applies to judicial proceedings
7 concerning trusts commenced before July 1, 2011, unless the
8 court finds that application of a particular provision of this
9 chapter would substantially interfere with the effective
10 conduct of the judicial proceedings or prejudice the rights of
11 the parties, in which case the particular provision of this
12 chapter does not apply and the superseded law applies;

13 (4) Any rule of construction or presumption provided in
14 this chapter applies to trust instruments executed before July
15 1, 2011, unless there is a clear indication of a contrary intent
16 in the terms of the trust instrument; and

17 (5) An act done before July 1, 2011 is not affected by this
18 chapter.

19 (b) If a right is acquired or vested before July 1, 2011, or
20 if a right is extinguished or barred upon the expiration of a
21 prescribed period that has commenced to run under any other
22 statute before July 1, 2011, that right or statute continues to
23 apply even if the statute has been repealed or superseded.

CHAPTER 67

**(Com. Sub. for H. B. 2464 - By Delegates Miley,
Boggs, Fragale, Poling, Morgan, Hunt,
Fleischauer, Moore, Ellem, Hamilton and Lane)**

[Amended and again passed, in an effort to meet the objections
of the Governor, March 18, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6B-3-2 of said code, all relating to the Ethics Act generally; requiring public servants and spouses to disclose additional information on financial disclosure statements including, with limited exceptions, certain spousal information; defining a spouse; directing the ethics commission to publish and make available to the public notice of delinquent filing of financial statements; providing that the ethics commission publish financial statements in certain circumstances and clarifying existing requirements; and prohibiting certain public employees and public servants from registering as a lobbyist during and for a year following state government employment.

Be it enacted by the Legislature of West Virginia:

That §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that 6B-3-2 be amended and reenacted, all to read as follows:

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;
POWERS AND DUTIES; DISCLOSURE
OF FINANCIAL INTEREST BY PUBLIC
OFFICIALS AND EMPLOYEES;
APPEARANCES BEFORE PUBLIC
AGENCIES; CODE OF CONDUCT FOR
ADMINISTRATIVE LAW JUDGES.**

§6B-2-6. Financial disclosure statement; filing requirements.

1 (a) The financial disclosure statement shall be filed on the
2 first day of February of each calendar year to cover the
3 period of the preceding calendar year, except insofar as may
4 be otherwise provided herein. The following persons must
5 file the financial disclosure statement required by this section
6 with the Ethics Commission:

7 (1) All elected officials in this state, including, but not
8 limited to, all persons elected statewide, all county elected
9 officials, municipal elected officials in municipalities which
10 have, by ordinance, opted to be covered by the disclosure
11 provisions of this section, all members of the several county
12 or district boards of education and all county or district
13 school board superintendents;

14 (2) All members of state boards, commissions and
15 agencies appointed by the governor; and

16 (3) Secretaries of departments, commissioners, deputy
17 commissioners, assistant commissioners, directors, deputy
18 directors, assistant directors, department heads, deputy
19 department heads and assistant department heads.

20 A person who is required to file a financial disclosure
21 statement under this section by virtue of becoming an elected
22 or appointed public official whose office is described in
23 subdivision (1), (2) or (3) of this subsection, and who
24 assumes the office less than ten days before a filing date
25 established herein or who assumes the office after the filing

26 date, shall file a financial disclosure statement for the
27 previous twelve months no later than thirty days after the date
28 on which the person assumes the duties of the office, unless
29 the person has filed a financial disclosure statement with the
30 commission during the twelve-month period before he or she
31 assumed office.

32 (b) A candidate for public office shall file a financial
33 disclosure statement for the previous calendar year with the
34 state ethics commission no later than ten days after he or she
35 files a certificate of candidacy, but in all circumstances, not
36 later than ten days prior to the election, unless he or she has
37 filed a financial disclosure statement with the state ethics
38 commission during the previous calendar year.

39 The Ethics Commission shall file a duplicate copy of the
40 financial disclosure statement required in this section in the
41 following offices within ten days of the receipt of the
42 candidate's statement of disclosure:

43 (1) Municipal candidates in municipalities which have
44 opted, by ordinance, to be covered by the disclosure
45 provisions of this section, in the office of the clerk of the
46 municipality in which the candidate is seeking office;

47 (2) Legislative candidates in single county districts and
48 candidates for a county office or county school board in the
49 office of the clerk of the county commission of the county in
50 which the candidate is seeking office;

51 (3) Legislative candidates from multi-county districts and
52 congressional candidates in the office of the clerk of the
53 county commission of the county of the candidate's
54 residence.

55 After a ninety-day period following any election, the
56 clerks who receive the financial disclosure statements of
57 candidates may destroy or dispose of those statements filed
58 by candidates who were unsuccessful in the election.

59 (c) No candidate for public office may maintain his or her
60 place on a ballot and no public official may take the oath of
61 office or enter or continue upon his or her duties or receive
62 compensation from public funds unless he or she has filed a
63 financial disclosure statement with the state ethics
64 commission as required by the provisions of this section.

65 (d) The Ethics Commission may, upon request of any
66 person required to file a financial disclosure statement, and
67 for good cause shown, extend the deadline for filing such
68 statement for a reasonable period of time: *Provided*, That no
69 extension of time shall be granted to a candidate who has not
70 filed a financial disclosure statement for the preceding filing
71 period.

72 (e) No person shall fail to file a statement required by this
73 section.

74 (f) No person shall knowingly file a materially false
75 statement that is required to be filed under this section.

76 (g) The Ethics Commission shall publish either on the
77 internet or by printed document made available to the public,
78 a list of all persons who have violated any ethics
79 commission's financial disclosure statement filing deadline.

80 (h) The Ethics Commission shall, in addition to making
81 all financial disclosure statements available for inspection
82 upon request:

83 (1) Publish on the internet all financial disclosure
84 statements filed by members of the Legislature and
85 candidates for legislative office, elected members of the
86 executive department and candidates for the offices that
87 constitute the executive department, and members of the
88 Supreme Court of Appeals and candidates for the Supreme
89 Court of Appeals, commencing with those reports filed on or
90 after January 1, 2012; and

91 (2) Publish on the internet all financial disclosure
92 statements filed by any other person required to file such
93 financial disclosure statements, as the commission
94 determines resources are available to permit the Ethics
95 Commission to make such publication on the internet. The
96 commission shall redact financial disclosure statements
97 published on the internet to exclude from publication
98 personal information such as signatures, home addresses and
99 mobile and home telephone numbers.

§6B-2-7. Financial disclosure statement; contents.

1 (a) The financial disclosure statement required under this
2 article shall contain the following information:

3 (1) The name, residential and business addresses of the
4 person filing the statement and of his or her spouse and all
5 names under which the person or the person's spouse, or
6 both, do business. For purposes of this section, the word
7 "spouse" means any individual who is legally married to and
8 cohabits with the person filing the statement.

9 (2) For each position of employment held by the person
10 filing the statements and the person's spouse:

11 (A) The name of the employer;

12 (B) The address of the employer;

13 (C) The job title; and

14 (D) A general description of job duties.

15 (3) The name and address of each business in which the
16 person filing the statement or that person's spouse has or had
17 in the last year an interest of at least \$10,000 at fair market
18 value.

19 (A) For the purposes of this subsection, business interests
20 include, but are not limited to, an interest in:

21 (i) Non-publicly owned businesses;

22 (ii) Publicly or privately traded stocks, bonds or
23 securities, including those held in self-directed retirement
24 accounts; and

25 (iii) Commercial real estate.

26 (B) For the purposes of this subsection, business interests
27 do not include mutual funds, specific holdings in mutual
28 funds or retirement accounts.

29 (4) The name, address, and brief description of a
30 nonprofit organization in which the individual or spouse is a
31 director or officer.

32 (5) The identification, by category, of every source of
33 income over \$1,000, including distributions from retirement
34 accounts received during the preceding calendar year, in his
35 or her own name or by any other person for his or her use or
36 benefit, by the person filing the statement, or that person's
37 spouse, and a brief description of the nature of the income
38 producing activities for which the income was received. This
39 subdivision does not require a person filing the statement
40 who derives income from a business, profession or
41 occupation, or who's spouse derives income from a business,
42 profession or occupation, to disclose the individual sources
43 and items of income that constitute the gross income of that
44 business, profession or occupation.

45 (6) If the person filing the statement, or that person's
46 spouse, profited or benefitted in the year before the date of
47 filing from a contract for the sale of goods or services to a
48 state, county, municipal or other local governmental agency
49 either directly or through a partnership, corporation or

50 association in which the person, or that person's spouse,
51 owned or controlled more than ten percent, the person shall
52 describe the nature of the goods or services and identify the
53 governmental agencies which purchased the goods or
54 services.

55 (7) Each interest group or category listed below doing
56 business in this state with which the person filing the
57 statement, did business or furnished services and from which
58 the person filing the statement, or that person's spouse,
59 received more than twenty percent of his or her gross income
60 during the preceding calendar year. The groups or categories
61 are electric utilities, gas utilities, telephone utilities, water
62 utilities, cable television companies, interstate transportation
63 companies, intrastate transportation companies, oil or gas
64 retail, wholesale, exploration, production or drilling
65 companies, banks, savings and loan associations, loan or
66 finance companies, manufacturing companies, surface
67 mining companies, deep mining companies, mining
68 equipment companies, chemical companies, insurance
69 companies, retail companies, beer, wine or liquor companies
70 or distributors, recreation related companies, timbering
71 companies, hospitals or other health care providers, trade
72 associations, professional associations, associations of public
73 employees or public officials, counties, cities or towns, labor
74 organizations, waste disposal companies, wholesale
75 companies, groups or associations promoting gaming or
76 lotteries, advertising companies, media companies, race
77 tracks, promotional companies, lobbying, economic
78 development entities, state government, construction,
79 information technology and legal service providers.

80 (8) The names of all persons, excluding that person's
81 immediate family, parents or grandparents residing or
82 transacting business in the state to whom the person filing the
83 statement, owes, on the date of execution of this statement in
84 the aggregate in his or her own name or in the name of any
85 other person more than \$5,000: *Provided*, That nothing

86 herein requires the disclosure of a mortgage on the person's
87 primary and secondary residences or of automobile loans on
88 automobiles maintained for the use of the person's immediate
89 family, or of a student loan, nor does this section require the
90 disclosure of debts which result from the ordinary conduct of
91 the person's business, profession or occupation or of debts of
92 the person filing the statement to any financial institution,
93 credit card company or business, in which the person has an
94 ownership interest: *Provided, however,* That the previous
95 proviso does not exclude from disclosure loans obtained
96 pursuant to the linked deposit program provided in article
97 one-a, chapter twelve of this code or any other loan or debt
98 incurred which requires approval of the state or any of its
99 political subdivisions.

100 (9) The names of all persons except immediate family
101 members, parents and grandparents residing or transacting
102 business in the state (other than a demand or savings account
103 in a bank, savings and loan association, credit union or
104 building and loan association or other similar depository)
105 who owes on the date of execution of this statement more
106 than, in the aggregate, \$5,000 to the person filing the
107 statement, either in his or her own name or to any other
108 person for his or her use or benefit. This subdivision does
109 not require the disclosure of debts owed to the person filing
110 the statement which debts result from the ordinary conduct of
111 the person's business, profession or occupation or of loans
112 made by the person filing the statement to any business in
113 which the person has an ownership interest.

114 (10) The source of each gift, including those described in
115 subdivision (2), subsection (c), section five of this article,
116 having a value of over \$100, received from a person having
117 a direct and immediate interest in a governmental activity
118 over which the person filing the statement has control, shall
119 be reported by the person filing the statement when the gift
120 is given to that person in his or her name or for his or her use
121 or benefit during the preceding calendar year: *Provided,* That

122 any person filing a statement required to be filed pursuant to
123 this section is not required to report those gifts described in
124 subdivision (2), subsection (c), section five of this article that
125 are otherwise required to be reported by a registered lobbyist
126 under section four, article three of this chapter: *Provided,*
127 *however,* That gifts received by will or by virtue of the laws
128 of descent and distribution, or received from one's spouse,
129 child, grandchild, parents or grandparents, or received by
130 way of distribution from an inter vivos or testamentary trust
131 established by the spouse or child, grandchild or by an
132 ancestor of the person filing the statement are not required to
133 be reported. As used in this subdivision, any series or
134 plurality of gifts which exceeds in the aggregate the sum of
135 \$100 from the same source or donor, either directly or
136 indirectly, and in the same calendar year are regarded as a
137 single gift in excess of that aggregate amount.

138 (11) The name of each for-profit business of which the
139 person filing the statement, or that person's spouse, serves as
140 a member of the board of directors or an officer, as well as a
141 general description of the type of business.

142 (12) The name and business address of any child or step-
143 child who is eighteen years or older and employed by state,
144 county or municipal government.

145 (13) The signature of the person filing the statement.

146 (b) Notwithstanding the provisions of subsection (a) of
147 this section, any person serving on a board, commission or
148 agency for which no compensation, other than expense
149 reimbursement, is statutorily authorized, is not required to
150 disclose the financial information relating to his or her spouse
151 as required by subdivisions three or five of subsection (a) of
152 this section if:

153 (1) His or her spouse, or a business with which he or she
154 is associated, are not regulated by, do not have a contract

155 with, or do not receive any grants or appropriations from, the
156 board, the commission or agency on which the person filing
157 the statement serves. A business with which a filer's spouse
158 is associated means a business in which the person or an
159 immediate family member is a director, officer, owner,
160 employee, compensated agent, or holder of stock which
161 constitutes five percent or more of the total outstanding
162 stocks of any class; and

163 (2) The filer executes a signed statement on a form
164 provided by the commission verifying these facts.

ARTICLE 3. LOBBYISTS.

§6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or within
2 thirty days after being employed as a lobbyist, whichever
3 occurs first, a lobbyist shall register with the Ethics
4 Commission by filing a lobbyist registration statement. The
5 registration statement shall contain information and be in a
6 form prescribed by the Ethics Commission by legislative
7 rule, including, but not limited to, the following information:

8 (1) The registrant's name, business address, telephone
9 numbers and any temporary residential and business
10 addresses and telephone numbers used or to be used by the
11 registrant while lobbying during a legislative session;

12 (2) The name, address and occupation or business of the
13 registrant's employer;

14 (3) A statement as to whether the registrant is employed
15 or retained by his or her employer solely as a lobbyist or as
16 a regular employee performing services for the employer
17 which include, but are not limited to, lobbying;

18 (4) A statement as to whether the registrant is employed
19 or retained by his or her employer under any agreement,
20 arrangement or understanding according to which the
21 registrant's compensation, or any portion of the registrant's
22 compensation, is or will be contingent upon the success of his
23 or her lobbying activity;

24 (5) The general subject or subjects, if known, on which
25 the registrant will lobby or employ some other person to
26 lobby in a manner which requires registration under this
27 article; and

28 (6) An appended written authorization from each of the
29 lobbyist's employers confirming the lobbyist's employment
30 and the subjects on which the employer is to be represented.

31 (b) Any lobbyist who receives or is to receive
32 compensation from more than one person for services as a
33 lobbyist shall file a separate notice of representation with
34 respect to each person compensating him or her for services
35 performed as a lobbyist. When a lobbyist whose fee for
36 lobbying with respect to the same subject is to be paid or
37 contributed by more than one person, then the lobbyist may
38 file a single statement, in which he or she shall detail the
39 name, business address and occupation of each person paying
40 or contributing to the fee.

41 (c) Whenever a change, modification or termination of
42 the lobbyist's employment occurs, the lobbyist shall, within
43 one week of the change, modification or termination, furnish
44 full information regarding the change, modification or
45 termination by filing with the commission an amended
46 registration statement.

47 (d) Each lobbyist who has registered shall file a new
48 registration statement, revised as appropriate, on the Monday
49 preceding the second Wednesday in January of each odd-

50 numbered year and failure to do so terminates his or her
51 authorization to lobby. Until the registration is renewed, the
52 person may not engage in lobbying activities unless he or she
53 is otherwise exempt under paragraph (B), subdivision (7),
54 section one of this article.

55 (e) The following public officers or employees may not,
56 during or up to one year after the termination of their public
57 employment or service, be allowed to register as lobbyists:

58 (1) Members of the Legislature;

59 (2) Members of the Executive Department as referenced
60 in article VII, section one of the Constitution of West
61 Virginia;

62 (3) Will and pleasure professional employees of the
63 Legislature under the direct supervision of a member of the
64 Legislature;

65 (4) Will and pleasure professional employees of members
66 of the Executive Department under the direct supervision of
67 the Executive Department officer and who regularly,
68 personally and substantially participates in a decision-making
69 or advisory capacity regarding agency or department policy;

70 (5) Members of the Supreme Court of Appeals;

71 (6) Any department secretary of an executive branch
72 department created by the provisions of section two, article
73 one, chapter five-f of this code; and,

74 (7) Heads of any state departments or agencies.

CHAPTER 68

**(H. B. 2695 - By Delegates Morgan,
Givens and Stephens)**

[Passed March 12, 2011; in effect from passage.]

[Approved by the Governor on April 4, 2011.]

AN ACT to amend reenact §5F-2-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §10-5-1, §10-5-2, §10-5-3 and §10-5-4 of said code; and to amend said code by adding thereto a new section, designated §10-5-6, all relating generally to organization and authority of executive branch agencies and departments; relating to the educational broadcasting authority; modifying organizational structure; declaring legislative findings; deleting outdated language; authorizing the authority and its employees to work with certain private nonprofit corporations; authorizing the use of the authority's property and facilities for fundraising purposes; authorizing the authority to solicit funds for the support of public broadcasting; requiring memoranda of understanding; and providing exemption from disclosure for names of private donors.

Be it enacted by the Legislature of West Virginia:

That §5F-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §10-5-1, §10-5-2, §10-5-3 and §10-5-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §10-5-6, all to read as follows:

**CHAPTER 5F. REORGANIZATION OF THE
EXECUTIVE BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

***§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and funds
3 associated with any agency or board, are incorporated in and
4 administered as a part of the Department of Administration:

5 (1) Building Commission provided in article six, chapter
6 five of this code;

7 (2) Public Employees Insurance Agency provided in
8 article sixteen, chapter five of this code;

9 (3) Governor's Mansion Advisory Committee provided
10 in article five, chapter five-a of this code;

11 (4) Commission on Uniform State Laws provided in
12 article one-a, chapter twenty-nine of this code;

13 (5) West Virginia Public Employees Grievance Board
14 provided in article three, chapter six-c of this code;

15 (6) Board of Risk and Insurance Management provided
16 in article twelve, chapter twenty-nine of this code;

17 (7) Boundary Commission provided in article
18 twenty-three, chapter twenty-nine of this code;

19 (8) Public Defender Services provided in article
20 twenty-one, chapter twenty-nine of this code;

***CLERK'S NOTE:** This section was also amended by Com. Sub. for S. B. 241
(Chapter 158) which passed prior to this act and Com. Sub. for S. B. 238
(Chapter 157) which passed subsequent to this act.

21 (9) Division of Personnel provided in article six, chapter
22 twenty-nine of this code;

23 (10) The West Virginia Ethics Commission provided in
24 article two, chapter six-b of this code;

25 (11) Consolidated Public Retirement Board provided in
26 article ten-d, chapter five of this code; and

27 (12) Real Estate Division provided in article ten, chapter
28 five-a of this code.

29 (b) The following agencies and boards, including all of
30 the allied, advisory, affiliated or related entities and funds
31 associated with any agency or board, are incorporated in and
32 administered as a part of the Department of Commerce:

33 (1) Division of Labor provided in article one, chapter
34 twenty-one of this code, which includes:

35 (A) Occupational Safety and Health Review Commission
36 provided in article three-a, chapter twenty-one of this code;
37 and

38 (B) Board of Manufactured Housing Construction and
39 Safety provided in article nine, chapter twenty-one of this
40 code;

41 (2) Office of Miners' Health, Safety and Training
42 provided in article one, chapter twenty-two-a of this code.
43 The following boards are transferred to the Office of Miners'
44 Health, Safety and Training for purposes of administrative
45 support and liaison with the office of the Governor:

46 (A) Board of Coal Mine Health and Safety and Coal
47 Mine Safety and Technical Review Committee provided in
48 article six, chapter twenty-two-a of this code;

- 49 (B) Board of Miner Training, Education and Certification
50 provided in article seven, chapter twenty-two-a of this code;
51 and
- 52 (C) Mine Inspectors' Examining Board provided in
53 article nine, chapter twenty-two-a of this code;
- 54 (3) The West Virginia Development Office provided in
55 article two, chapter five-b of this code;
- 56 (4) Division of Natural Resources and Natural Resources
57 Commission provided in article one, chapter twenty of this
58 code;
- 59 (5) Division of Forestry provided in article one-a, chapter
60 nineteen of this code;
- 61 (6) Geological and Economic Survey provided in article
62 two, chapter twenty-nine of this code; and
- 63 (7) Workforce West Virginia provided in chapter
64 twenty-one-a of this code, which includes:
- 65 (A) Division of Unemployment Compensation;
- 66 (B) Division of Employment Service;
- 67 (C) Division of Workforce Development; and
- 68 (D) Division of Research, Information and Analysis; and
- 69 (8) Division of Energy provided in article two-f, chapter
70 five-b of this code;
- 71 (9) Division of Tourism Commission provided in article
72 two-h, chapter five-b of this code.

73 (c) The Economic Development Authority provided in
74 article fifteen, chapter thirty-one of this code is continued as
75 an independent agency within the executive branch.

76 (d) The Water Development Authority and the Water
77 Development Authority Board provided in article one,
78 chapter twenty-two-c of this code is continued as an
79 independent agency within the executive branch.

80 (e) The following agencies and boards, including all of
81 the allied, advisory and affiliated entities, are transferred to
82 the Department of Environmental Protection for purposes of
83 administrative support and liaison with the office of the
84 Governor:

85 (1) Air Quality Board provided in article two, chapter
86 twenty-two-b of this code;

87 (2) Solid Waste Management Board provided in article
88 three, chapter twenty-two-c of this code;

89 (3) Environmental Quality Board, or its successor board,
90 provided in article three, chapter twenty-two-b of this code;

91 (4) Surface Mine Board provided in article four, chapter
92 twenty-two-b of this code;

93 (5) Oil and Gas Inspectors' Examining Board provided in
94 article seven, chapter twenty-two-c of this code;

95 (6) Shallow Gas Well Review Board provided in article
96 eight, chapter twenty-two-c of this code; and

97 (7) Oil and Gas Conservation Commission provided in
98 article nine, chapter twenty-two-c of this code.

99 (f) The following agencies and boards, including all of
100 the allied, advisory, affiliated or related entities and funds

101 associated with any agency or board, are incorporated in and
102 administered as a part of the Department of Education and
103 the Arts:

104 (1) Library Commission provided in article one, chapter
105 ten of this code;

106 (2) Division of Culture and History provided in article
107 one, chapter twenty-nine of this code;

108 (3) Division of Rehabilitation Services provided in
109 section two, article ten-a, chapter eighteen of this code.

110 (g) The Educational Broadcasting Authority provided in
111 article five, chapter ten of this code, is part of the Department
112 of Education and the Arts for purposes of administrative
113 support and liaison with the office of the Governor.

114 (h) The following agencies and boards, including all of
115 the allied, advisory, affiliated or related entities and funds
116 associated with any agency or board, are incorporated in and
117 administered as a part of the Department of Health and
118 Human Resources:

119 (1) Human Rights Commission provided in article eleven,
120 chapter five of this code;

121 (2) Division of Human Services provided in article two,
122 chapter nine of this code;

123 (3) Bureau for Public Health provided in article one,
124 chapter sixteen of this code;

125 (4) Office of Emergency Medical Services and the
126 Emergency Medical Services Advisory Council provided in
127 article four-c, chapter sixteen of this code;

128 (5) Health Care Authority provided in article
129 twenty-nine-b, chapter sixteen of this code;

130 (6) Commission on Mental Retardation provided in
131 article fifteen, chapter twenty-nine of this code;

132 (7) Women's Commission provided in article twenty,
133 chapter twenty-nine of this code; and

134 (8) The Child Support Enforcement Division provided in
135 chapter forty-eight of this code.

136 (i) The following agencies and boards, including all of
137 the allied, advisory, affiliated or related entities and funds
138 associated with any agency or board, are incorporated in and
139 administered as a part of the Department of Military Affairs
140 and Public Safety:

141 (1) Adjutant General's Department provided in article
142 one-a, chapter fifteen of this code;

143 (2) Armory Board provided in article six, chapter fifteen
144 of this code;

145 (3) Military Awards Board provided in article one-g,
146 chapter fifteen of this code;

147 (4) West Virginia State Police provided in article two,
148 chapter fifteen of this code;

149 (5) Division of Homeland Security and Emergency
150 Management and Disaster Recovery Board provided in
151 article five, chapter fifteen of this code and Emergency
152 Response Commission provided in article five-a of said
153 chapter;

154 (6) Sheriffs' Bureau provided in article eight, chapter
155 fifteen of this code;

156 (7) Division of Justice and Community Services provided
157 in article nine a, chapter fifteen of this code;

158 (8) Division of Corrections provided in chapter
159 twenty-five of this code;

160 (9) Fire Commission provided in article three, chapter
161 twenty-nine of this code;

162 (10) Regional Jail and Correctional Facility Authority
163 provided in article twenty, chapter thirty-one of this code;

164 (11) Board of Probation and Parole provided in article
165 twelve, chapter sixty-two of this code.

166 (j) The following agencies and boards, including all of
167 the allied, advisory, affiliated or related entities and funds
168 associated with any agency or board, are incorporated in and
169 administered as a part of the Department of Revenue:

170 (1) Tax Division provided in chapter eleven of this code;

171 (2) Racing Commission provided in article twenty-three,
172 chapter nineteen of this code;

173 (3) Lottery Commission and position of Lottery Director
174 provided in article twenty-two, chapter twenty-nine of this
175 code;

176 (4) Insurance Commissioner provided in article two,
177 chapter thirty-three of this code;

178 (5) West Virginia Alcohol Beverage Control
179 Commissioner provided in article sixteen, chapter eleven of
180 this code and article two, chapter sixty of this code;

181 (6) Board of Banking and Financial Institutions provided
182 in article three, chapter thirty-one-a of this code;

183 (7) Lending and Credit Rate Board provided in chapter
184 forty-seven-a of this code;

185 (8) Division of Banking provided in article two, chapter
186 thirty-one-a of this code;

187 (9) The State Budget Office provided in article two of
188 this chapter;

189 (10) The Municipal Bond Commission provided in article
190 three, chapter thirteen of this code;

191 (11) The Office of Tax Appeals provided in article ten-a,
192 chapter eleven of this code; and

193 (12) The State Athletic Commission provided in article
194 five-a, chapter twenty-nine of this code.

195 (k) The following agencies and boards, including all of
196 the allied, advisory, affiliated or related entities and funds
197 associated with any agency or board, are incorporated in and
198 administered as a part of the Department of Transportation:

199 (1) Division of Highways provided in article two-a,
200 chapter seventeen of this code;

201 (2) Parkways, Economic Development and Tourism
202 Authority provided in article sixteen-a, chapter seventeen of
203 this code;

204 (3) Division of Motor Vehicles provided in article two,
205 chapter seventeen-a of this code;

206 (4) Driver's Licensing Advisory Board provided in article
207 two, chapter seventeen-b of this code;

208 (5) Aeronautics Commission provided in article two-a,
209 chapter twenty-nine of this code;

210 (6) State Rail Authority provided in article eighteen,
211 chapter twenty-nine of this code; and

212 (7) Public Port Authority provided in article sixteen-b,
213 chapter seventeen of this code.

214 (l) The Veterans' Council provided in article one, chapter
215 nine-a of this code, including all of the allied, advisory,
216 affiliated or related entities and funds associated with it is,
217 incorporated in and administered as part of the Department of
218 Veteran's Assistance.

219 (m) Except for powers, authority and duties that have
220 been delegated to the secretaries of the departments by the
221 provisions of section two of this article, the position of
222 administrator and the powers, authority and duties of each
223 administrator and agency are not affected by the enactment
224 of this chapter.

225 (n) Except for powers, authority and duties that have been
226 delegated to the secretaries of the departments by the
227 provisions of section two of this article, the existence,
228 powers, authority and duties of boards and the membership,
229 terms and qualifications of members of the boards are not
230 affected by the enactment of this chapter. All boards that are
231 appellate bodies or are independent decision makers shall not
232 have their appellate or independent decision-making status
233 affected by the enactment of this chapter.

234 (o) Any department previously transferred to and
235 incorporated in a department by prior enactment of this
236 section means a division of the appropriate department.
237 Wherever reference is made to any department transferred to
238 and incorporated in a department created in section two,
239 article one of this chapter, the reference means a division of
240 the appropriate department and any reference to a division of

241 a department so transferred and incorporated means a section
242 of the appropriate division of the department.

243 (p) When an agency, board or commission is transferred
244 under a bureau or agency other than a department headed by
245 a secretary pursuant to this section, that transfer is solely for
246 purposes of administrative support and liaison with the Office
247 of the Governor, a department secretary or a bureau. Nothing
248 in this section extends the powers of department secretaries
249 under section two of this article to any person other than a
250 department secretary and nothing limits or abridges the
251 statutory powers and duties of statutory commissioners or
252 officers pursuant to this code.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS;
ROSTER OF SERVICEMEN; EDUCATIONAL
BROADCASTING AUTHORITY.**

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-1. Legislative findings; definitions.

1 (a) The Legislature hereby finds and declares that:

2 (1) It is the duty of this state to provide the best
3 educational training possible for all its citizens;

4 (2) The encouragement and use of noncommercial
5 educational radio, television and related media operating and
6 originating from educational broadcasting, closed circuit or
7 related facilities located at a site or sites within this state
8 serving all the citizens of this state on a regional basis or as
9 part of a coordinated statewide plan is a proper, necessary
10 and beneficial means of providing and extending enriched
11 educational instruction to all the citizens of this state at the

12 preschool, elementary, secondary and higher education and
13 adult levels;

14 (3) Private nonprofit corporations have been established
15 in this state for the sole purpose of raising funds for the
16 financial support of the state's Public Broadcasting Network,
17 which funds have been a vital source of private funding for
18 the authority and enure to the benefit of all the citizens of the
19 state; and

20 (4) Because of the unique educational benefit conferred
21 upon and available to all the citizens of the state by the
22 efforts of the authority and the private nonprofit corporations
23 established for the sole purpose of providing support for
24 public broadcasting in this state, authorizing the authority to
25 allow its employees to work with, and its property and
26 facilities to be used by, the private nonprofit corporations is
27 a proper, necessary and beneficial means of providing
28 financial support for the state's Public Broadcasting Network.

29 (b) The following terms have the following meanings:

30 (1) "Authority" means the Educational Broadcasting
31 Authority established by the provisions of this article.

32 (2) "Distance learning" means educational courses,
33 seminars, programs and teleconferences transmitted
34 electronically and designed to instruct students who are
35 remote from the instructor or other participants; such courses,
36 seminars, programs and teleconferences may constitute all or
37 a significant portion of a class offered for college or public
38 school credit, or they may be provided for faculty
39 development, continuing professional education, for training
40 employees of governmental agencies, nonprofit
41 organizations, business or industry;

42 (3) "EdNet" means those individuals identified as an
43 enterprise of the University of West Virginia College of

44 Graduate Studies and West Virginia State College on behalf
45 of the state college and university systems who are delegated
46 the responsibility for developing, operating and maintaining
47 facilities for the production and transmission of distance
48 learning; and

49 (4) "SatNet" means those individuals identified as an
50 enterprise of the state college and university systems who are
51 delegated the responsibility for developing and providing
52 distance learning.

**§10-5-2. West Virginia Educational Broadcasting Authority;
members; organization; officers; employees;
meetings; expenses.**

1 (a) The West Virginia Educational Broadcasting
2 Authority is continued as a public benefit corporation. The
3 Authority shall consist of eleven voting members, who shall
4 be residents of the state, including:

5 (1) The Governor or designee;

6 (2) The State Superintendent of Schools;

7 (3) One member of the West Virginia Board of Education
8 to be selected by it annually;

9 (4) One member of the West Virginia Higher Education
10 Policy Commission to be selected by it annually; and

11 (5) Seven members appointed by the Governor by and
12 with the advice and consent of the Senate for overlapping
13 terms of seven years, one term expiring each year.

14 (b) Not less than one appointive member shall come from
15 each congressional district. Any vacancy among the
16 appointed members shall be filled by the Governor by
17 appointment for the unexpired term.

18 (c) Employees of noncommercial broadcasting stations in
19 West Virginia are not eligible for appointment to the
20 Authority.

21 (d) The authority shall annually select a member to serve
22 as the chair. The authority shall annually select one of its
23 public members as vice chair and shall appoint a secretary
24 who need not be a member of the Authority and who shall
25 keep records of its proceedings.

26 (e) The authority shall appoint the executive director and
27 fix his or her salary. The executive director is responsible for
28 managing and administering the daily functions of the
29 authority and for performing all other functions necessary to
30 the effective operation of the authority. The authority is
31 authorized to establish offices for the proper performance of
32 its duties.

33 (f) The authority shall hold at least one annual meeting.
34 The time and place of the meetings shall be established upon
35 its own resolution or at the call of the chairperson of the
36 authority. The members shall serve without compensation
37 but may be reimbursed for all reasonable and necessary
38 expenses actually incurred in the performance of their duties
39 in a manner consistent with the guidelines of the Travel
40 Management Office of the Department of Administration.

§10-5-3. Powers of authority.

1 The authority shall have the power:

2 (1) To act as advisor and consultant to television and
3 radio stations concerning noncommercial educational
4 programs supported by federal, state, county, city or private
5 funds;

6 (2) To cooperate with and assist all local and state
7 educational institutions in planning and development of the
8 use of educational radio, television and related media;

9 (3) To promote and coordinate the use of these media for
10 noncommercial educational purposes;

11 (4) To construct, maintain and operate educational
12 broadcasting, closed circuit or related facilities located at a
13 suitable site or sites within this state including, without
14 limitation thereby, production centers, broadcasting stations
15 and an audio-video microwave system for a statewide
16 broadcasting network connecting such communities or
17 stations as may be designated by the authority;

18 (5) To acquire in the name of the state for the use and
19 benefit of the authority by purchase, lease or agreement, any
20 property, both real and personal, and any interest in such
21 property necessary to carry out the provisions of this article;

22 (6) To apply for and receive any license from the
23 appropriate federal agency necessary to operate any
24 educational broadcasting, closed circuit or related facility;

25 (7) To supervise and approve the origination and
26 transmission of all noncommercial educational radio,
27 television and related media programs in this state which
28 would be carried through the facilities of a state network;

29 (8) To employ such personnel as may be necessary to
30 operate and maintain any facility created under the provisions
31 of this article, and to work with private nonprofit
32 corporations to raise funds for the financial support of the
33 state's public broadcasting network;

34 (9) To lease from communications common carriers and
35 use such transmission channels as may be necessary or, if it

36 determines it could more economically construct and
37 maintain such transmission channels, it may design,
38 construct, maintain and operate the same, including an audio-
39 video microwave network;

40 (10) To sue and be sued, plead and be impleaded;

41 (11) To contract and be contracted with, including the
42 power to enter into contracts with any person, firm or
43 corporation, including any like authority of neighboring
44 states; and shall have the authority, within state regulations,
45 to enter into program royalty and distribution contracts and
46 receive moneys for these purposes: *Provided*, That any
47 proceeds from such contracts shall be used by the authority
48 for noncommercial purposes only;

49 (12) To have and use a corporate seal;

50 (13) To promulgate reasonable rules and regulations to
51 carry out the provisions of this article in accordance with the
52 provisions of article three, chapter twenty-nine-a of the code;
53 and

54 (14) To perform such other services in behalf of
55 noncommercial educational radio, television and related
56 media as it may consider to be in the best interest of the state,
57 including the use of the authority's employees, property and
58 facilities for the purpose of raising funds for the support of
59 public broadcasting.

§10-5-4. Funds; right of state agencies, etc., to contribute to authority.

1 (a) The authority may solicit, apply for and receive
2 appropriations, gifts, bequests or grants from any agency of
3 the United States government, any agency of the State of
4 West Virginia, any municipality or county within this state,

5 any school board or college or university supported in whole
6 or in part by this state or any other person, firm, partnership,
7 association or corporation, within or without this state, and
8 any agency of the State of West Virginia, any municipality or
9 county within this state, or any school board or college or
10 university supported in whole or in part by this state is hereby
11 authorized and empowered to make appropriations or grants
12 to the authority, to assist in achieving the public purpose of
13 the authority.

14 (b) All such funds shall be deposited with the State
15 Treasurer of West Virginia or with a private nonprofit
16 corporation established for the sole purpose of providing
17 support for public broadcasting in this state which has
18 entered into a memorandum of understanding with the
19 authority pursuant to the provisions of section six of this
20 article, and used exclusively for carrying out the provisions
21 of this article: *Provided*, That any appropriations, gifts,
22 bequests or grants received by the authority with any
23 restriction or restrictions on the use thereof shall be expended
24 by the authority in accordance with such restriction or
25 restrictions.

§10-5-6. Cooperation with private nonprofit corporations.

1 (a) In furtherance of its mission and fulfillment of its
2 duties, the authority is expressly authorized to allow its
3 employees to work with, and its property and facilities to be
4 used by, private nonprofit corporations established for the
5 sole purpose of providing support for public broadcasting in
6 this state.

7 (b) To document the implementation of subsection (a) of
8 this section, the authority shall enter into memoranda of
9 understanding with private nonprofit corporations established
10 for the sole purpose of providing support for public
11 broadcasting in this state, to delineate the rights and
12 responsibilities of the parties.

13 (c) Notwithstanding any provision in this code to the
14 contrary, the names of individual donors to the authority or
15 to a private nonprofit corporation established for the sole
16 purpose of providing support for public broadcasting in this
17 state are not subject to the provisions of chapter twenty-nine-
18 b of this code.

CHAPTER 69

**(Com. Sub. for H. B. 2986 - By Delegates
Hartman, Michael, Williams, Crosier,
Shaver, D. Campbell and Romine)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §20-3-5 of the Code of West Virginia, 1931, as amended, relating to forest fire seasons; modifying prohibited and permissible fire times and forest fire seasons; revising the procedure for obtaining a burning permit; establishing permit fees for certain entities; exempting agriculture from permit fees; setting forth fire control requirements; and establishing criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That §20-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.**§20-3-5. Forest fire seasons; prohibited and permissible fires; burning permits and fees; fire control measures; criminal and civil penalties.**

1 (a) *Forest fire seasons.* -- March 1 through May 31, and
2 October 1 through December 31 are designated as forest fire
3 seasons. During any fire season, a person may set on fire or
4 cause to be set on fire any forest land, or any grass, grain,
5 stubble, slash, debris, or other inflammable materials only
6 between five o'clock p.m. and seven o'clock a.m., at which
7 time the fire must be extinguished.

8 (b) *Permissible fires during forest fire seasons.* -- The
9 following attended fires are permitted without a burning
10 permit unless there is a burning ban in effect:

11 (1) Small fires set for the purpose of food preparation, or
12 providing light or warmth around which all grass, brush,
13 stubble, or other debris has been removed for a distance of
14 ten feet from the fire; and

15 (2) Burning conducted at any time when the ground
16 surrounding the burning site is covered by one inch or more
17 of snow.

18 (c) *Burning permits.*-- The director or his or her designee
19 may issue burning permits authorizing fires during forest fire
20 seasons that are otherwise prohibited by this section. The
21 permits shall state the requisite conditions and time frame to
22 prevent danger from the fire to life or property.

23 (1) *Permit fees.*-- Entities required to pay a permit fee are
24 those engaged in commercial, manufacturing, public utility,
25 mining and like activities. Agricultural activities are exempt
26 from paying the permit fee. The permit fee is \$125 per site
27 and shall be deposited into the Division of Forestry Fund
28 (3081) to be used to administer the provisions of this section.

29 The permit fee covers the fire season during which it is
30 issued.

31 (2) Noncompliance with any condition of the permit is a
32 violation of this section. Any permit which was obtained
33 through willful misrepresentation is invalid and violates this
34 section.

35 (3) Permit holders shall take all necessary and adequate
36 precautions to confine and control fires authorized by the
37 permit. Failure to take action is a violation of this section
38 and is justification for the director to revoke the permit.

39 (d) *Fire control.* --

40 (1) With approval of the Governor, the director may
41 prohibit the starting of and require the extinguishment of fire
42 in any designated area, including fires permitted by this
43 section.

44 (2) With approval of the Governor, the director may
45 designate any forest area as a danger area, prohibit entry, and
46 declare conditional uses and prohibited areas of the forest by
47 proclamation at any time of the year. The proclamation shall
48 be furnished to newspapers, radio stations and television
49 stations that serve the designated area and shall become
50 effective after twenty-four hours. The proclamation remains
51 in effect until the director, with the approval of the Governor,
52 terminates it. The order shall designate the time of
53 termination, and notice of the order shall be furnished to each
54 newspaper, radio station and television station that received
55 a copy of the proclamation.

56 (3) Burning is not permitted by this section until all
57 inflammable material has been removed from around the
58 material to be burned and a safety strip of at least ten feet is
59 established to ensure that the fire will not escape.

60 (e) *Criminal and civil penalties.* -- A person or entity that
61 violates this section is guilty of a misdemeanor and, upon
62 conviction, shall be fined not less than \$100 and not more
63 than \$1,000 for each violation. In addition to fines and costs,
64 a person or entity convicted of a violation of this section shall
65 pay a \$200 civil penalty to the division within sixty days.
66 The civil penalty shall be collected by the court in which the
67 person is convicted and forwarded to the division and
68 deposited in the Division of Forestry Fund (3081) to be used
69 to administer the provisions of this section.



CHAPTER 70

**(Com. Sub. for S. B. 460 - By Senators Laird,
Williams, D. Facemire and Fanning)**

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §15-10-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1A-4 of said code; and to amend and reenact §20-7-1 of said code, all relating to clarifying that Division of Forestry natural resources police officers are under the control and direction of the Director of the Division of Forestry; permitting the director to enter into memorandums of understanding with other law-enforcement agencies; and clarifying the duties of the director.

Be it enacted by the Legislature of West Virginia:

That §15-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §19-1A-4 of said code be amended

and reenacted; and that §20-7-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

1 For purposes of this article only, and unless a different
2 meaning plainly is required:

3 (1) "Criminal justice enforcement personnel" means
4 those persons within the state criminal justice system who are
5 actually employed as members of the State Police, members
6 of the Division of Protective Services, natural resources
7 police officers, chiefs of police and police of incorporated
8 municipalities, and county sheriffs and their deputies, and
9 whose primary duties are the investigation of crime and the
10 apprehension of criminals.

11 (2) "Head of a law-enforcement agency" means the
12 Superintendent of the State Police, the Director of the
13 Division of Protective Services, the chief natural resources
14 police officer of the Division of Natural Resources, a chief of
15 police of an incorporated municipality, a county sheriff or the
16 Director of the Division of Forestry.

17 (3) "State or local law-enforcement officer" means any
18 duly authorized member of a law-enforcement agency who
19 is authorized to maintain public peace and order, prevent and
20 detect crime, make arrests and enforce the laws of the state or
21 any county or municipality thereof, other than parking
22 ordinances, and includes persons employed as campus police
23 officers at state institutions of higher education in accordance
24 with the provisions of section five, article four, chapter
25 eighteen-b of this code, although those institutions may not
26 be considered law-enforcement agencies. The term includes

27 persons employed as rangers by the Hatfield-McCoy
28 Regional Recreation Authority in accordance with the
29 provisions of section six, article fourteen, chapter twenty of
30 this code, although the authority is not a law-enforcement
31 agency.

32 (4) "Head of campus police" means the superintendent or
33 administrative head of state or local law-enforcement officers
34 employed as campus police officers at state institutions of
35 higher education in accordance with the provisions of section
36 five, article four, chapter eighteen-b of this code.

37 (5) "Head of the rangers of the Hatfield-McCoy Regional
38 Recreation Authority" means the superintendent or
39 administrative head of state or local law-enforcement officers
40 employed as rangers by the Hatfield-McCoy Regional
41 Recreation Authority in accordance with the provisions of
42 section six, article fourteen, chapter twenty of this code.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-4. Additional duties of the Director of the Division of Forestry generally.

1 (a) The director shall:

2 (1) Develop, promote and advance the growth of the
3 forest products industries of this state;

4 (2) Cooperate with educational institutions, development
5 agencies, and private and public organizations to promote the
6 expansion of the forest products industries of this state in
7 local and global markets;

8 (3) Conduct research on marketing and developing forest
9 products and forest products industries; conserving,
10 managing, and utilizing the state's forest land and its multiple
11 uses; and

12 improving the forestry knowledge and practices of private
13 landowners.

14 (4) Compile its findings and recommendations, and
15 disseminate the results of its research to the public, the forest
16 products industry, the Governor and the Legislature.

17 (b) The director has the power to carry out and effectuate
18 the purposes of this article, article one-b of this chapter, and
19 article three of chapter twenty of this code, including the
20 power to:

21 (1) Accept and use gifts, donations or contributions from
22 individuals, organizations or corporations, and to acquire by
23 gift, lease or purchase real estate.

24 (2) Establish law enforcement practices and procedures
25 to address the law enforcement requirements of the division;
26 and

27 (3) To promulgate rules and regulations, subject to the
28 provisions of chapter twenty-nine-a of this code.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.

1 (a) The division's law-enforcement policies, practices
2 and programs are under the immediate supervision and
3 direction of the division law-enforcement officer selected by

4 the director and designated as chief natural resources police
5 officer as provided in section thirteen, article one of this
6 chapter.

7 (b) Under the supervision of the director, the chief natural
8 resources police officer shall organize, develop and maintain
9 law-enforcement practices, means and methods geared, timed
10 and adjustable to seasonal, emergency and other needs and
11 requirements of the division's comprehensive natural
12 resources program. All division personnel detailed and
13 assigned to law-enforcement duties and services under this
14 section shall be known and designated as natural resources
15 police officers and are under the immediate supervision and
16 direction of the chief natural resources police officer except
17 as otherwise provided. All natural resources police officers
18 shall be trained, equipped and conditioned for duty and
19 services wherever and whenever required by division
20 law-enforcement needs.

21 (c) The chief natural resources police officer, acting
22 under supervision of the director, is authorized to select and
23 appoint emergency natural resources police officers for a
24 limited period for effective enforcement of the provisions of
25 this chapter when considered necessary because of
26 emergency or other unusual circumstances. The emergency
27 natural resources police officers shall be selected from
28 qualified civil service personnel of the division, except in
29 emergency situations and circumstances when the director
30 may designate officers, without regard to civil service
31 requirements and qualifications, to meet law-enforcement
32 needs. Emergency natural resources police officers shall
33 exercise all powers and duties prescribed in section four of
34 this article for full-time salaried natural resources police
35 officers except the provisions of subdivision (8) of said
36 section.

37 (d) The chief natural resources police officer, acting
38 under supervision of the director, is also authorized to select
39 and appoint as special natural resources police officers any
40 full-time civil service employee who is assigned to, and has
41 direct responsibility for management of, an area owned,
42 leased or under the control of the division and who has
43 satisfactorily completed a course of training established and
44 administered by the chief natural resources police officer,
45 when the action is considered necessary because of
46 law-enforcement needs. The powers and duties of a special
47 natural resources police officer, appointed under this
48 provision, is the same within his or her assigned area as
49 prescribed for full-time salaried natural resources police
50 officers. The jurisdiction of the person appointed as a special
51 natural resources police officer, under this provision, shall be
52 limited to the division area or areas to which he or she is
53 assigned and directly manages.

54 (e) The Director of the Division of Forestry is authorized
55 to appoint and revoke Division of Forestry special natural
56 resources police officers who are full-time civil service
57 personnel who have satisfactorily completed a course of
58 training as required by the Director of the Division of
59 Forestry. The jurisdiction, powers and duties of Division of
60 Forestry special natural resources police officers are set forth
61 by the Director of the Division of Forestry pursuant to article
62 three of this chapter, and articles one-a and one-b, chapter
63 nineteen of this code.

64 (f) The chief natural resources police officer, with the
65 approval of the director, has the power and authority to
66 revoke any appointment of an emergency natural resources
67 police officer or of a special natural resources police officer
68 at any time.

69 (g) Natural resources police officers are subject to
70 seasonal or other assignment and detail to duty whenever and

71 wherever required by the functions, services and needs of the
72 division.

73 (h) The chief natural resources police officer shall
74 designate the area of primary residence of each natural
75 resources police officer, including himself or herself. Since
76 the area of business activity of the division is actually
77 anywhere within the territorial confines of the State of West
78 Virginia, actual expenses incurred shall be paid whenever the
79 duties are performed outside the area of primary assignment
80 and still within the state.

81 (i) Natural resources police officers shall receive, in
82 addition to their base pay salary, a minimum monthly
83 subsistence allowance for their required telephone service,
84 dry cleaning or required uniforms, and meal expenses while
85 performing their regular duties in their area of primary
86 assignment in the amount of \$130 each month. This
87 subsistence allowance does not apply to special or emergency
88 natural resources police officers appointed under this section.

89 (j) After June 30, 2010, all those full time
90 law-enforcement officers employed by the Division of
91 Natural Resources as conservation officers shall be titled and
92 known as natural resources police officers. Wherever used
93 in this code the term "conservation officer," or its plural,
94 means "natural resources police officer," or its plural,
95 respectively.

96 (k) Notwithstanding any provision of this code to the
97 contrary, the provisions of subdivision six, subsection c,
98 section twelve, article twenty-one, chapter eleven of this code
99 are inapplicable to pensions of natural resources police
100 officers paid through the Public Employees Retirement
101 System.

●

CHAPTER 71

(H. B. 2475 - By Delegates Perry and Ellem)

[Passed February 16, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2011.]

AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to including certain records of the Division of Juvenile Services in the exemptions from disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

1 (a) The following categories of information are
2 specifically exempt from disclosure under the provisions of
3 this article:

4 (1) Trade secrets, as used in this section, which may
5 include, but are not limited to, any formula, plan pattern,
6 process, tool, mechanism, compound, procedure, production
7 data or compilation of information which is not patented
8 which is known only to certain individuals within a
9 commercial concern who are using it to fabricate, produce or
10 compound an article or trade or a service or to locate

11 minerals or other substances, having commercial value, and
12 which gives its users an opportunity to obtain business
13 advantage over competitors;

14 (2) Information of a personal nature such as that kept in
15 a personal, medical or similar file, if the public disclosure
16 thereof would constitute an unreasonable invasion of privacy,
17 unless the public interest by clear and convincing evidence
18 requires disclosure in the particular instance: *Provided*, That
19 nothing in this article shall be construed as precluding an
20 individual from inspecting or copying his or her own
21 personal, medical or similar file;

22 (3) Test questions, scoring keys and other examination
23 data used to administer a licensing examination, examination
24 for employment or academic examination;

25 (4) Records of law-enforcement agencies that deal with
26 the detection and investigation of crime and the internal
27 records and notations of such law-enforcement agencies
28 which are maintained for internal use in matters relating to
29 law-enforcement;

30 (5) Information specifically exempted from disclosure by
31 statute;

32 (6) Records, archives, documents or manuscripts
33 describing the location of undeveloped historic, prehistoric,
34 archaeological, paleontological and battlefield sites or
35 constituting gifts to any public body upon which the donor
36 has attached restrictions on usage or the handling of which
37 could irreparably damage such record, archive, document or
38 manuscript;

39 (7) Information contained in or related to examination,
40 operating or condition reports prepared by, or on behalf of, or
41 for the use of any agency responsible for the regulation or

42 supervision of financial institutions, except those reports
43 which are by law required to be published in newspapers;

44 (8) Internal memoranda or letters received or prepared by
45 any public body;

46 (9) Records assembled, prepared or maintained to
47 prevent, mitigate or respond to terrorist acts or the threat of
48 terrorist acts, the public disclosure of which threaten the
49 public safety or the public health;

50 (10) Those portions of records containing specific or
51 unique vulnerability assessments or specific or unique
52 response plans, data, databases and inventories of goods or
53 materials collected or assembled to respond to terrorist acts;
54 and communication codes or deployment plans of law-
55 enforcement or emergency response personnel;

56 (11) Specific intelligence information and specific
57 investigative records dealing with terrorist acts or the threat
58 of a terrorist act shared by and between federal and
59 international law-enforcement agencies, state and local law-
60 enforcement and other agencies within the Department of
61 Military Affairs and Public Safety;

62 (12) National security records classified under federal
63 executive order and not subject to public disclosure under
64 federal law that are shared by federal agencies and other
65 records related to national security briefings to assist state
66 and local government with domestic preparedness for acts of
67 terrorism;

68 (13) Computing, telecommunications and network
69 security records, passwords, security codes or programs used
70 to respond to or plan against acts of terrorism which may be
71 the subject of a terrorist act;

72 (14) Security or disaster recovery plans, risk assessments,
73 tests or the results of those tests;

74 (15) Architectural or infrastructure designs, maps or other
75 records that show the location or layout of the facilities where
76 computing, telecommunications or network infrastructure
77 used to plan against or respond to terrorism are located or
78 planned to be located;

79 (16) Codes for facility security systems; or codes for
80 secure applications for such facilities referred to in
81 subdivision (15) of this subsection;

82 (17) Specific engineering plans and descriptions of
83 existing public utility plants and equipment;

84 (18) Customer proprietary network information of other
85 telecommunications carriers, equipment manufacturers and
86 individual customers, consistent with 47 U.S.C. §222; and

87 (19) Records of the Division of Corrections, Regional Jail
88 Authority and the Division of Juvenile Services relating to
89 design of corrections, jail and detention facilities owned or
90 operated by the agency, and the policy directives and
91 operational procedures of personnel relating to the safe and
92 secure management of inmates or residents, that if released,
93 could be utilized by an inmate or resident to escape a facility,
94 or to cause injury to another inmate, resident or to facility
95 personnel.

96 (b) As used in subdivisions (9) through (16), inclusive,
97 subsection (a) of this section, the term “terrorist act” means
98 an act that is likely to result in serious bodily injury or
99 damage to property or the environment and is intended to:

100 (1) Intimidate or coerce the civilian population;

101 (2) Influence the policy of a branch or level of
102 government by intimidation or coercion;

103 (3) Affect the conduct of a branch or level of government
104 by intimidation or coercion; or

105 (4) Retaliate against a branch or level of government for
106 a policy or conduct of the government.

107 (c) Nothing in the provisions of subdivisions (9) through
108 (16), inclusive, subsection (a) of this section should be
109 construed to make subject to the provisions of this chapter
110 any evidence of an immediate threat to public health or safety
111 unrelated to a terrorist act or the threat thereof which comes
112 to the attention of a public entity in the course of conducting
113 a vulnerability assessment response or similar activity.

CHAPTER 72

**(Com. Sub. for S. B. 550 - By Senators Klempa,
Kessler (Acting President), Wills, Snyder,
Yost, Miller, Edgell and D. Facemire)**

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-23-12d; to amend and reenact §29-22A-6, §29-22A-10 and §29-22A-10c of said code; and to amend and reenact §29-25-19 and §29-25-22 of said code, all relating generally to gaming at licensed racetracks and historic resort hotels; allowing

simulcast pari-mutuel racing and wagering at certain historic resort hotels; defining terms; permitting the issuing of licenses; providing for payments; setting forth conditions for out-of-state tracks and interstate pools; registering of persons conducting wagering activities; setting forth the licensee's retainage; setting forth the amounts of payments made by a licensee and to whom they are to be paid; making reference to certain federal law; authorizing rulemaking; exempting certain pari-mutuel wagering and equipment, services and supplies from state sales and service taxes; permitting licensees at racetracks and historic resort hotels to establish minimum and maximum wager limits at video lottery terminals; authorizing the use of video lottery terminal bill acceptors for all United States currency; directing up to \$10 million each year until June 30, 2020, from racetrack video lottery gross terminal income into a new racetrack modernization fund to be used to subsidize racetrack purchases of new video lottery terminals and related equipment; reducing the required life for capital investments by licensees at racetracks to be reimbursed from the Capital Investment Fund; extending the time for recoupment of expenditures for capital improvements; and directing that two and one-half percent of the gross terminal income of certain historic resort hotels be deposited into a new historic resort hotel modernization fund to be used to subsidize certain historic resort hotel purchases.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §19-23-12d; that §29-22A-6, §29-22A-10 and §29-22A-10c of said code be amended and reenacted; and that §29-25-19 and §29-25-22 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.**ARTICLE 23. HORSE AND DOG RACING.****§19-23-12d. Simulcast races and pari-mutuel wagering at authorized gaming facility in historic resort hotel.**

1 (a) *Definitions.* -- In addition to the words and phrases
2 defined in section three of this article, the words and phrases
3 defined in subsection (b) of this section have the meanings
4 provided in that subsection when used in this section, unless
5 the context in which the term or phrase is used clearly
6 indicates that a different meaning is intended.

7 (b) *Defined words and phrases.* --

8 (1) "Applicant" means any gaming licensee who is
9 licensed under article twenty-five, chapter twenty-nine of this
10 code, applying for a license under this section to conduct
11 pari-mutuel wagering on televised horse and dog races.

12 (2) "Designated pari-mutuel wagering area" means one or
13 more specific areas of an existing historic resort hotel within
14 which the Racing Commission has authorized the gaming
15 licensee to offer pari-mutuel wagering to patrons of the hotel.

16 (3) "Gaming facility" means a designated area on the
17 premises of an existing historic resort hotel in which
18 pari-mutuel wagering is conducted by a gaming licensee.

19 (4) "Gaming licensee" means the licensed operator of a
20 gaming facility under article twenty-five, chapter twenty-nine
21 of this code, who is also licensed under this article to offer
22 pari-mutuel wagering on simulcast horse or dog races or on
23 both types of races.

24 (5) "Historic resort hotel" means a historic resort hotel as
25 defined in section two, article twenty-five, chapter
26 twenty-nine of this code.

27 (6) “In-state host track” means a racetrack within this
28 state licensed to conduct horse or dog race meetings at which
29 pari-mutuel wagering is conducted and which is an in-state
30 sending track.

31 (7) “In-state sending track” means a racetrack in this state
32 licensed under this article to conduct horse or dog race
33 meetings at which pari-mutuel wagering is conducted and
34 which is equipped to conduct simulcasting of those races and
35 intertrack pari-mutuel wagering on those races.

36 (8) “In-state track” means an in-state host track or an
37 in-state sending track.

38 (9) “Interstate common pool” means a pari-mutuel pool
39 established within this state or in another state or foreign
40 nation within which is combined comparable pari-mutuel
41 pools of one or more receiving legal wagering entities located
42 in one or more states or foreign nations upon a race at a
43 sending track located within or outside of this state for the
44 purpose of establishing payoff prices in the various
45 jurisdictions.

46 (10) “Intertrack wagering” means parimutuel wagering
47 on simulcast horse or dog races held at an in-state sending
48 track by patrons at a gaming facility licensed under this
49 section and the electronic transmission of the wagers to the
50 in-state sending track.

51 (11) “License” means a license issued by the Racing
52 Commission pursuant to this section, including:

53 (A) A license to operate a gaming facility in which
54 pari-mutuel wagering on simulcast races will be available to
55 patrons;

56 (B) A license to be employed in connection with the
57 operation of a gaming facility at which pari-mutuel wagering
58 is offered on simulcast races; or

59 (C) A license to provide management services under a
60 contract to a gaming facility licensed under this article.

61 (12) “Licensed gaming facility employee” means any
62 individual licensed or registered to be employed by a gaming
63 licensee in connection with the operation of a pari-mutuel
64 wagering pursuant to this section.

65 (13) “Out-of-state host track” means a racetrack in a
66 jurisdiction other than this state, the operator of which is
67 lawfully permitted to conduct a horse or dog race meeting
68 and which conducts horse or dog races upon which
69 pari-mutuel wagers may be placed.

70 (14) “Out-of-state track” means an out-of-state host track
71 or an out-of-State sending track.

72 (15) “Out-of-state sending track” means a racetrack in a
73 jurisdiction other than the State of West Virginia which is
74 lawfully permitted to conduct a horse or dog race meeting
75 and to provide simulcast horse or dog races to a racetrack in
76 this state.

77 (16) “Participation agreement” means the written contract
78 that provides for the establishment or implementation of
79 simulcasting of horse or dog races and pari-mutuel wagering.
80 Each contract shall set forth the manner in which the
81 pari-mutuel wagering system shall be managed, operated and
82 capitalized, as well as how expenses and revenues shall be
83 allocated and distributed by and among the licensed gaming
84 facility under this section and the other eligible participants
85 in the contract.

86 (17) “Premises of an existing historic resort hotel” means
87 the historic resort hotel, attachments of the historic resort
88 hotel, and the traditional, immediate grounds of the historic
89 resort hotel.

90 (18) “Receiving gaming facility” means a licensed
91 racetrack or authorized gaming facility within this state
92 licensed under this article which is equipped to receive
93 simulcast horse and dog races and to conduct intertrack or
94 interstate wagering on those races.

95 (19) “Simulcast horse or dog races” means horse or dog
96 races conducted at an in-state sending track or an out-of-state
97 sending track, as the case may be, and transmitted
98 simultaneously by picture to the authorized gaming facility
99 licensed under this section or other legal wagering facility.

100 (20) “Simulcasting” means the simultaneous audio or
101 visual transmission of horse or dog races conducted at
102 in-state and out-of-state racetracks to the gaming facility
103 licensee under this section and pari-mutuel wagering on the
104 results of those races.

105 (c) *Application for license.* -- An applicant who is
106 licensed under article twenty-five, chapter twenty-nine of this
107 code may apply to the West Virginia Racing Commission for
108 a license to conduct at the historic resort hotel pari-mutuel
109 wagering on simulcast horse and dog races held at a licensed
110 racetrack in this state, or in another jurisdiction, where
111 pari-mutuel wagering is permitted and conducted. The
112 application shall be submitted in the form prescribed by the
113 commission and provide the information required by the
114 commission.

115 (d) *Issuance of license.* -- Within sixty days after an
116 application is filed pursuant to subsection (b) of this section,
117 the Racing Commission shall act on the application and

118 either grant or deny the application: *Provided*, That issuance
119 of the license shall not be unreasonably withheld. Once
120 issued, the license shall expire, be renewed, revoked or
121 suspended on the same basis as licenses issued under this
122 article to racetracks to hold live racing and conduct
123 pari-mutuel wagering.

124 (e) *Transmission of races from in-state sending tracks.*
125 -- An in-state sending track may transmit to a gaming
126 licensee under this section all or some of the live races
127 conducted at the racetrack.

128 (f) *Receipt of simulcasts transmitted from out-of-state*
129 *tracks.* -- The gaming licensee under this section may, in
130 accordance with this article, and any applicable rules of the
131 Racing Commission and with the approval of the
132 commission, receive at the facility simulcast horse or dog
133 races, or both, conducted at out-of-state sending tracks.

134 (g) *Payments to sending track.* -- The authorized gaming
135 facility receiving a simulcast horse or dog race from an
136 out-of-state sending track shall pay to the out-of-state sending
137 track for the transmission such amount, if any, as may be
138 agreed upon by the authorized gaming facility and the
139 out-of-state sending track. The authorized gaming facility
140 accepting pari-mutuel wagers on a horse or dog race
141 conducted at an out-of-state host track shall pay to the
142 out-of-state host track such amount, if any, as provided for in
143 the agreement, if any, between the authorized gaming facility
144 and the out-of-state host track.

145 (h) *Conditions for participation by out-of-state tracks;*
146 *interstate common pools.* --

147 (1) Except as provided in subdivision (2) of this
148 subsection, the Racing Commission shall not permit an
149 out-of-state sending track or an out-of-state host track to

150 participate in simulcast pari-mutuel wagering or qualify as an
151 out-of-state host track, respectively, unless the pari-mutuel
152 pools respecting the authorized gaming facility under this
153 article are combined with comparable pari-mutuel pools at
154 the out-of-state track. The types of wagering, takeout,
155 distribution of winnings, rules of racing, method of
156 calculating breakage, and the percentage of deposits
157 remaining undistributed from a pari-mutuel pool after
158 payment is made to winning ticket holders shall be
159 determined in accordance with the law or policy applicable
160 to the out-of-state track.

161 (2) With the prior approval of the Racing Commission
162 and the concurrence of the out-of-state track, an authorized
163 gaming facility under this article and receiving tracks or
164 entities in other states other than the state in which the
165 out-of-state track is located may form an interstate common
166 pool. With respect to such interstate common pools, the
167 Racing Commission may approve types of wagering, takeout,
168 distribution of winnings, rules of racing, method of
169 calculating breakage, and a percentage of deposits remaining
170 undistributed from a parimutuel pool after payment is made
171 to winning ticket holders which are different from those
172 which would otherwise be applied in this state but which are
173 consistent for all parties to the interstate common pool.

174 (i) *Licensing or registration of persons conducting*
175 *wagering-related activities.* -- All persons engaged in
176 conducting wagering-related activities at the authorized
177 gaming facility licensed under this section, whether
178 employed directly by the licensee or by a person or entity
179 conducting or operating the simulcast racing and pari-mutuel
180 wagering facility under an agreement with the licensee, shall
181 be licensed or registered in accordance with such rules as
182 may be promulgated by the Racing Commission. All other
183 employees at the simulcast racing and pari-mutuel wagering
184 facility shall be licensed or registered in accordance with

185 regulations of the Racing Commission: *Provided*, That when
186 the employee is licensed by the Lottery Commission, that
187 employee must register with the Racing Commission is not
188 required to have a separate license issued by the Racing
189 Commission. The Racing Commission shall has the authority
190 to promulgate rules, regulations and conditions under which
191 all such licenses are issued, or registrations made, in this state
192 and to revoke or refuse to issue a license, or revoke or refuse
193 to accept a registration, if in the opinion of the commission
194 the revocation or refusal is in the public interest: *Provided*,
195 That the rules, regulations and conditions are uniform in their
196 application to both the gaming facility licensed under this
197 section and racetracks licensed under this article to hold race
198 meetings at which pari-mutuel wagering is conducted. The
199 fees under this subsection may not be in excess of the fee
200 charge for a similar occupational permit or license at a
201 licensed racetrack.

202 (j) *Retainage of gaming licensee.* -- The gaming licensee
203 under this section shall retain from pari-mutuel wagers a
204 basic commission of seventeen and twenty-five
205 one-hundredths percent on horse races and a basic
206 commission of sixteen and twenty-five one-hundredths
207 percent on dog races. Breakage shall be calculated and
208 distributed in the manner provided in subsection (c), section
209 nine of this article.

210 (k) *Payments by the licensee.* -- Out of the commission
211 retained or deducted by a gaming licensee under the
212 provisions of subsection (j) of this section, the gaming
213 licensee shall pay:

214 (1) One-tenth of one percent into the General Revenue
215 Fund of county commission of the county in which the
216 historic resort hotel is located;

217 (2) Each day, the daily pari-mutuel pools tax calculated
218 under section ten of this article; and

219 (3) The amount required to be paid under the terms of
220 a contract with a host licensed racing association in this
221 state or in another jurisdiction that permits pari-mutual
222 wagering on horse or dog races held or conducted in that
223 jurisdiction.

224 (l) After making the payments required by subsection (k)
225 of this section, the remaining balance may be retained by the
226 gaming licensee under this section.

227 (m) *Compliance with federal law.* -- The federal
228 Interstate Horseracing Act of 1978, P. L. 95-515, 15 U.S.C.
229 §§3001-3007, is instructive as the legislative intent of this
230 section.

231 (n) *Promulgation of rules.* -- The Racing Commission
232 shall promulgate rules in accordance with article three,
233 chapter twenty-nine-a of this code, it deems necessary to
234 implement and efficiently administer this section: *Provided,*
235 That the rules are to be consistent with the rules
236 promulgated for pari-mutuel wagering on televised races at
237 the racetracks.

238 (o) *Pari-mutuel wagers and equipment exempt from*
239 *sales tax.* -- Notwithstanding any provision of this code to
240 the contrary, the license tax imposed in section ten of this
241 article shall be in lieu of payment of the tax imposed by
242 article fifteen, chapter eleven of this code, on pari-mutuel
243 wagering and on the purchase of equipment, services and
244 supplies directly used in pari-mutual wagering under this
245 section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**ARTICLE 22A. RACETRACK VIDEO LOTTERY.****§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.**

1 (a) The commission may approve video lottery terminals
2 and in doing so shall take into account advancements in
3 computer technology, competition from nearby states and the
4 preservation of jobs in the West Virginia pari-mutuel racing
5 industry. In approving video lottery terminals licensed for
6 placement in this state, the commission shall ensure that the
7 terminals meet the following hardware specifications:

8 (1) Electrical and mechanical parts and design principles
9 may not subject a player to physical hazards or injury.

10 (2) A surge protector shall be installed on the electrical
11 power supply line to each video lottery terminal. A battery
12 or equivalent power back-up for the electronic meters shall
13 be capable of maintaining accuracy of all accounting records
14 and terminal status reports for a period of one hundred eighty
15 days after power is disconnected from the terminal. The
16 power back-up device shall be located within the locked logic
17 board compartment of the video lottery terminal.

18 (3) An on/off switch which controls the electrical current
19 used in the operation of the terminal shall be located in an
20 accessible place within the interior of the video lottery terminal.

21 (4) The operation of each video lottery terminal may not
22 be adversely affected by any static discharge or other
23 electromagnetic interference.

24 (5) A minimum of one electronic or mechanical coin
25 acceptor or other means accurately and efficiently to establish
26 credits shall be installed on each video lottery terminal. Each
27 video lottery terminal may also contain bill acceptors for any
28 legal United States currency. All coin and bill acceptors shall
29 be approved by the commission prior to use on any video
30 lottery terminal in this state.

31 (6) Access to the interior of a video lottery terminal shall
32 be controlled through a series of locks and seals.

33 (7) The main logic boards and all erasable programmable
34 read-only memory chips (EPROMS) are considered to be
35 owned by the commission and shall be located in a separate
36 locked and sealed area within the video lottery terminal.

37 (8) The cash compartment shall be located in a separate
38 locked area within or attached to the video lottery terminal.

39 (9) No hardware switches, jumpers, wire posts or any
40 other means of manipulation may be installed which alter the
41 pay tables or payout percentages in the operation of a game.
42 Hardware switches on a video lottery terminal to control the
43 terminal's graphic routines, speed of play, sound and other
44 purely cosmetic features may be approved by the
45 commission.

46 (10) Each video lottery terminal shall contain a single
47 printing mechanism capable of printing an original ticket and
48 retaining an exact legible copy within the video lottery terminal
49 or other means of capturing and retaining an electronic copy of
50 the ticket data as approved by the commission: *Provided*, That
51 such printing mechanism is optional on any video lottery
52 terminal which is designed and equipped exclusively for coin or
53 token payouts. The following information shall be recorded on
54 the ticket when credits accrued on a video lottery terminal are
55 redeemed for cash:

- 56 (i) The number of credits accrued;
- 57 (ii) Value of the credits in dollars and cents displayed in
58 both numeric and written form;
- 59 (iii) Time of day and date;
- 60 (iv) Validation number; and
- 61 (v) Any other information required by the commission.
- 62 (11) A permanently installed and affixed identification
63 plate shall appear on the exterior of each video lottery
64 terminal and the following information shall be on the plate:
- 65 (i) Manufacturer of the video lottery terminal;
- 66 (ii) Serial number of the terminal; and
- 67 (iii) Model number of the terminal.
- 68 (12) The rules of play for each game shall be displayed
69 on the video lottery terminal face or screen. The commission
70 may reject any rules of play which are incomplete, confusing,
71 misleading or inconsistent with game rules approved by the
72 commission. For each video lottery game there shall be a
73 display detailing the credits awarded for the occurrence of
74 each possible winning combination of numbers or symbols.
75 A video lottery terminal may allow the amounts of minimum
76 and maximum wagers on a single game to be determined by
77 licensee or permit holder in the exercise of its business
78 judgment subject to the approval of the commission. All
79 information required by this subdivision shall be displayed
80 under glass or another transparent substance. No stickers or
81 other removable devices shall be placed on the video lottery
82 terminal screen or face without the prior approval of the
83 commission.

84 (13) Communication equipment and devices shall be
85 installed to enable each video lottery terminal to
86 communicate with the commission's central computer system
87 by use of a communications protocol provided by the
88 commission to each permitted manufacturer, which protocol
89 shall include information retrieval and terminal activation
90 and disable programs, and the commission may require each
91 licensed racetrack to pay the cost of a central site computer
92 as a part of the licensing requirement.

93 (14) All video lottery terminals shall have a security
94 system which temporarily disables the gaming function of the
95 terminal while opened.

96 (b) Each video lottery terminal shall have a random
97 number generator to determine randomly the occurrence of
98 each specific symbol or number used in video lottery games.
99 A selection process is random if it meets the following
100 statistical criteria:

101 (1) *Chi-square test.* -- Each symbol or number shall
102 satisfy the ninety-nine percent confidence level using the
103 standard chi-square statistical analysis of the difference
104 between the expected result and the observed result.

105 (2) *Runs test.* -- Each symbol or number may not produce
106 a significant statistic with regard to producing patterns of
107 occurrences. Each symbol or number is random if it meets
108 the ninety-nine percent confidence level with regard to the
109 runs test for the existence of recurring patterns within a set of
110 data.

111 (3) *Correlation test.* -- Each pair of symbols or numbers
112 is random if it meets the ninety-nine percent confidence level
113 using standard correlation analysis to determine whether each
114 symbol or number is independently chosen without regard to
115 another symbol or number within a single game play.

116 (4) *Serial correlation test.* -- Each symbol or number is
117 random if it meets the ninety-nine percent confidence level
118 using standard serial correlation analysis to determine
119 whether each symbol or number is independently chosen
120 without reference to the same symbol or number in a
121 previous game.

122 (c) Each video lottery terminal shall meet the following
123 maximum and minimum theoretical percentage payout during
124 the expected lifetime of the terminal:

125 (1) Video lottery games shall pay out no less than eighty
126 percent and no more than ninety-five percent of the amount
127 wagered. The theoretical payout percentage will be
128 determined using standard methods of probability theory.

129 (2) Manufacturers must file a request and receive
130 approval from the commission prior to manufacturing for
131 placement in this state video lottery terminals programmed
132 for a payout greater than ninety-two percent of the amount
133 wagered. Commission approval shall be obtained prior to
134 applying for testing of the high payout terminals.

135 (3) Each terminal shall have a probability greater than
136 one in seventeen million of obtaining the maximum payout
137 for each play.

138 (d) Each video lottery terminal shall be capable of
139 continuing the current game with all current game features
140 after a video lottery terminal malfunction is cleared. If a
141 video lottery terminal is rendered totally inoperable during
142 game play, the current wager and all credits appearing on the
143 video lottery terminal screen prior to the malfunction shall be
144 returned to the player.

145 (e) Each video lottery terminal shall at all times maintain
146 electronic accounting regardless of whether the terminal is
147 being supplied with electrical power. Each meter shall be

148 capable of maintaining a total of no less than eight digits in
149 length for each type of data required. The electronic meters
150 shall record the following information:

151 (1) Number of coins inserted by players or the coin
152 equivalent if a bill acceptor is being used or tokens or
153 vouchers are used;

154 (2) Number of credits wagered;

155 (3) Number of total credits, coins and tokens won;

156 (4) Number of credits paid out by a printed ticket;

157 (5) Number of coins or tokens won, if applicable;

158 (6) Number of times the logic area was accessed;

159 (7) Number of times the cash door was accessed;

160 (8) Number of credits wagered in the current game;

161 (9) Number of credits won in the last complete video
162 lottery game; and

163 (10) Number of cumulative credits representing money
164 inserted by a player and credits for video lottery games won
165 but not collected.

166 (f) No video lottery terminal may have any mechanism
167 which allows the electronic accounting meters to clear
168 automatically. Electronic accounting meters may not be
169 cleared without the prior approval of the commission. Both
170 before and after any electronic accounting meter is cleared,
171 all meter readings shall be recorded in the presence of a
172 commission employee.

173 (g) The primary responsibility for the control and
174 regulation of any video lottery games and video lottery
175 terminals operated pursuant to this article rests with the
176 commission.

177 (h) The commission shall, directly or through a contract
178 with a third-party vendor other than the video lottery
179 licensee, maintain a central site system of monitoring the
180 lottery terminals utilizing an on-line or dial-up inquiry. The
181 central site system shall be capable of monitoring the
182 operation of each video lottery game or video lottery terminal
183 operating pursuant to this article and, at the direction of the
184 director, immediately disable and cause not to operate any
185 video lottery game and video lottery terminal. As provided
186 in this section, the commission may require the licensed
187 racetrack to pay the cost of a central site computer as part of
188 the licensing requirement.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

1 (a) The commission shall provide to manufacturers, or
2 applicants applying for a manufacturer's permit, the protocol
3 documentation data necessary to enable the respective
4 manufacturer's video lottery terminals to communicate with
5 the commission's central computer for transmitting auditing
6 program information and for activation and disabling of
7 video lottery terminals.

8 (b) The gross terminal income of a licensed racetrack
9 shall be remitted to the commission through the electronic
10 transfer of funds. Licensed racetracks shall furnish to the
11 commission all information and bank authorizations required
12 to facilitate the timely transfer of moneys to the commission.
13 Licensed racetracks must provide the commission thirty
14 days' advance notice of any proposed account changes in
15 order to assure the uninterrupted electronic transfer of funds.
16 From the gross terminal income remitted by the licensee to
17 the commission:

18 (1) The commission shall deduct an amount sufficient to
19 reimburse the commission for its actual costs and expenses
20 incurred in administering racetrack video lottery at the
21 licensed racetrack and the resulting amount after the
22 deduction is the net terminal income. The amount deducted
23 for administrative costs and expenses of the commission may
24 not exceed four percent of gross terminal income: *Provided,*
25 That any amounts deducted by the commission for its actual
26 costs and expenses that exceeds its actual costs and expenses
27 shall be deposited into the State Lottery Fund. For the fiscal
28 years ending June 30, 2011 through June 30, 2020, the term
29 "actual costs and expenses" may include transfers of \$ up to
30 \$10 million in surplus allocations for each fiscal year, as
31 calculated by the commission when it has closed its books for
32 the fiscal year, to the Licensed Racetrack Modernization
33 Fund created by subdivision(2), subsection (b) of this section.
34 For all fiscal years beginning on or after July 1, 2001, the
35 commission shall not receive an amount of gross terminal
36 income in excess of the amount of gross terminal income
37 received during the fiscal year ending on June 30, 2001, but
38 four percent of any amount of gross terminal income received
39 in excess of the amount of gross terminal income received
40 during the fiscal year ending on June 30, 2001, shall be
41 deposited into the fund established in section eighteen-a,
42 article twenty-two of this chapter; and

43 (2) A Licensed Racetrack Modernization Fund is created
44 within the lottery fund. For all fiscal years beginning on or
45 after July 1, 2011, and ending with the fiscal year beginning
46 July 1, 2020, the commission shall deposit such amounts as
47 are available according to subdivision (1), subsection (b) of
48 this section into a separate facility modernization account
49 maintained within the Licensed Racetrack Modernization
50 Fund for each racetrack. Each racetrack's share of each
51 year's deposit shall be calculated in the same ratio as each
52 racetrack's apportioned contribution to the four percent
53 administrative costs and expenses allowance provided for in
54 subdivision (1), subsection (b) of this section for that year.
55 For each two dollars expended by a licensed racetrack for
56 facility modernization improvements at the racetrack, having
57 a useful life of three or more years and placed in service after
58 July 1, 2011, the licensed racetrack shall receive \$1 in
59 recoupment from its facility modernization account. If the
60 licensed racetrack's facility modernization account contains
61 a balance in any fiscal year, the unexpended balance from
62 that fiscal year will be available for matching for one
63 additional fiscal year, after which time, the remaining unused
64 balance carried forward shall revert to the lottery fund. For
65 purposes of this section, the term "facility modernization
66 improvements" includes acquisitions of new and unused
67 video lottery terminals and related equipment. Video lottery
68 terminals financed through the recoupment provided in this
69 subdivision must be retained by the licensee in its West
70 Virginia licensed location for a period of not less than five
71 years from the date of initial installation.

72 (c) The amount resulting after the deductions required by
73 subsection (b) of this section constitutes net terminal income
74 that shall be divided as set out in this subsection. For all
75 fiscal years beginning on or after July 1, 2001, any amount of
76 net terminal income received in excess of the amount of net
77 terminal income received during the fiscal year ending on
78 June 30, 2001, shall be divided as set out in section ten-b of

79 this article. The licensed racetrack's share is in lieu of all
80 lottery agent commissions and is considered to cover all costs
81 and expenses required to be expended by the licensed
82 racetrack in connection with video lottery operations. The
83 division shall be made as follows:

84 (1) The commission shall receive thirty percent of net
85 terminal income, which shall be paid into the State Lottery
86 Fund as provided in section ten-a of this article;

87 (2) Until July 1, 2005, fourteen percent of net terminal
88 income at a licensed racetrack shall be deposited in the
89 special fund established by the licensee, and used for
90 payment of regular purses in addition to other amounts
91 provided for in article twenty-three, chapter nineteen of this
92 code, on and after July 1, 2005, the rate shall be seven
93 percent of net terminal income;

94 (3) The county where the video lottery terminals are
95 located shall receive two percent of the net terminal income:
96 *Provided, That:*

97 (A) Beginning July 1, 1999, and thereafter, any amount
98 in excess of the two percent received during the fiscal year
99 1999 by a county in which a racetrack is located that has
100 participated in the West Virginia Thoroughbred Development
101 Fund since on or before January 1, 1999 shall be divided as
102 follows:

103 (i) The county shall receive fifty percent of the excess
104 amount; and

105 (ii) The municipalities of the county shall receive fifty
106 percent of the excess amount, said fifty percent to be divided
107 among the municipalities on a per capita basis as determined
108 by the most recent decennial United States census of
109 population; and

110 (B) Beginning July 1, 1999, and thereafter, any amount
111 in excess of the two percent received during the fiscal year
112 1999 by a county in which a racetrack other than a racetrack
113 described in paragraph (A) of this proviso is located and
114 where the racetrack has been located in a municipality within
115 the county since on or before January 1, 1999 shall be
116 divided, if applicable, as follows:

117 (i) The county shall receive fifty percent of the excess
118 amount; and

119 (ii) The municipality shall receive fifty percent of the
120 excess amount; and

121 (C) This proviso shall not affect the amount to be
122 received under this subdivision by any other county other
123 than a county described in paragraph (A) or (B) of this
124 proviso;

125 (4) One percent of net terminal income shall be paid for
126 and on behalf of all employees of the licensed racing
127 association by making a deposit into a special fund to be
128 established by the Racing Commission to be used for
129 payment into the pension plan for all employees of the
130 licensed racing association;

131 (5) The West Virginia Thoroughbred Development Fund
132 created under section thirteen-b, article twenty-three, chapter
133 nineteen of this code and the West Virginia Greyhound
134 Breeding Development Fund created under section ten of said
135 article shall receive an equal share of a total of not less than
136 one and one-half percent of the net terminal income;

137 (6) The West Virginia Racing Commission shall receive
138 one percent of the net terminal income which shall be
139 deposited and used as provided in section thirteen-c, article
140 twenty-three, chapter nineteen of this code.

141 (7) A licensee shall receive forty-six and one-half percent
142 of net terminal income.

143 (8)(A) The Tourism Promotion Fund established in
144 section twelve, article two, chapter five-b of this code shall
145 receive three percent of the net terminal income: *Provided,*
146 That for the fiscal year beginning July 1, 2003, the tourism
147 commission shall transfer from the Tourism Promotion Fund
148 \$5 million of the three percent of the net terminal income
149 described in this section and section ten-b of this article into
150 the fund administered by the West Virginia Economic
151 Development Authority pursuant to section seven, article
152 fifteen, chapter thirty-one of this code, \$5 million into the
153 Capitol Renovation and Improvement Fund administered by
154 the Department of Administration pursuant to section six,
155 article four, chapter five-a of this code and \$5 million into the
156 Tax Reduction and Federal Funding Increased Compliance
157 Fund; and

158 (B) Notwithstanding any provision of paragraph (A) of
159 this subdivision to the contrary, for each fiscal year beginning
160 after June 30, 2004, this three percent of net terminal income
161 and the three percent of net terminal income described in
162 paragraph (B), subdivision (8), subsection (a), section ten-b
163 of this article shall be distributed as provided in this
164 paragraph as follows:

165 (i) 1.375 percent of the total amount of net terminal
166 income described in this section and in section ten-b of this
167 article shall be deposited into the Tourism Promotion Fund
168 created under section twelve, article two, chapter five-b of
169 this code;

170 (ii) 0.375 percent of the total amount of net terminal
171 income described in this section and in section ten-b of this
172 article shall be deposited into the Development Office
173 Promotion Fund created under section three-b, article two,
174 chapter five-b of this code;

175 (iii) 0.5 percent of the total amount of net terminal
176 income described in this section and in section ten-b of this
177 article shall be deposited into the Research Challenge Fund
178 created under section ten, article one-b, chapter eighteen-b of
179 this code;

180 (iv) 0.6875 percent of the total amount of net terminal
181 income described in this section and in section ten-b of this
182 article shall be deposited into the Capitol Renovation and
183 Improvement Fund administered by the Department of
184 Administration pursuant to section six, article four, chapter
185 five-a of this code; and

186 (v) 0.0625 percent of the total amount of net terminal
187 income described in this section and in section ten-b of this
188 article shall be deposited into the 2004 Capitol Complex
189 Parking Garage Fund administered by the Department of
190 Administration pursuant to section five-a, article four,
191 chapter five-a of this code;

192 (9)(A) On and after July 1, 2005, seven percent of net
193 terminal income shall be deposited into the Workers'
194 Compensation Debt Reduction Fund created in section five,
195 article two-d, chapter twenty-three of this code: *Provided*,
196 That in any fiscal year when the amount of money generated
197 by this subdivision totals \$11 million, all subsequent
198 distributions under this subdivision shall be deposited in the
199 special fund established by the licensee and used for the
200 payment of regular purses in addition to the other amounts
201 provided in article twenty-three, chapter nineteen of this
202 code;

203 (B) The deposit of the seven percent of net terminal
204 income into the Worker's Compensation Debt Reduction
205 Fund pursuant to this subdivision shall expire and not be
206 imposed with respect to these funds and shall be deposited in
207 the special fund established by the licensee and used for

208 payment of regular purses in addition to the other amounts
209 provided in article twenty-three, chapter nineteen of this
210 code, on and after the first day of the month following the
211 month in which the Governor certifies to the Legislature that:
212 (i) The revenue bonds issued pursuant to article two-d,
213 chapter twenty-three of this code, have been retired or
214 payment of the debt service provided for; and (ii) that an
215 independent certified actuary has determined that the
216 unfunded liability of the old fund, as defined in chapter
217 twenty-three of this code, has been paid or provided for in its
218 entirety; and

219 (10) The remaining one percent of net terminal income
220 shall be deposited as follows:

221 (A) For the fiscal year beginning July 1, 2003, the
222 veterans memorial program shall receive one percent of the
223 net terminal income until sufficient moneys have been
224 received to complete the veterans memorial on the grounds
225 of the State Capitol Complex in Charleston, West Virginia.
226 The moneys shall be deposited in the State Treasury in the
227 Division of Culture and History special fund created under
228 section three, article one-i, chapter twenty-nine of this code:
229 *Provided*, That only after sufficient moneys have been
230 deposited in the fund to complete the veterans memorial and
231 to pay in full the annual bonded indebtedness on the veterans
232 memorial, not more than \$20,000 of the one percent of net
233 terminal income provided in this subdivision shall be
234 deposited into a special revenue fund in the State Treasury,
235 to be known as the "John F. 'Jack' Bennett Fund". The
236 moneys in this fund shall be expended by the Division of
237 Veterans Affairs to provide for the placement of markers for
238 the graves of veterans in perpetual cemeteries in this state.
239 The Division of Veterans Affairs shall promulgate legislative
240 rules pursuant to the provisions of article three, chapter
241 twenty-nine-a of this code specifying the manner in which
242 the funds are spent, determine the ability of the surviving

243 spouse to pay for the placement of the marker and setting
244 forth the standards to be used to determine the priority in
245 which the veterans grave markers will be placed in the event
246 that there are not sufficient funds to complete the placement
247 of veterans grave markers in any one year, or at all. Upon
248 payment in full of the bonded indebtedness on the veterans
249 memorial, \$100,000 of the one percent of net terminal
250 income provided in this subdivision shall be deposited in the
251 special fund in the Division of Culture and History created
252 under section three, article one-i, chapter twenty-nine of this
253 code and be expended by the Division of Culture and History
254 to establish a West Virginia veterans memorial archives
255 within the Cultural Center to serve as a repository for the
256 documents and records pertaining to the veterans memorial,
257 to restore and maintain the monuments and memorial on the
258 capitol grounds: *Provided, however,* That \$500,000 of the
259 one percent of net terminal income shall be deposited in the
260 State Treasury in a special fund of the Department of
261 Administration, created under section five, article four,
262 chapter five-a of this code, to be used for construction and
263 maintenance of a parking garage on the state Capitol
264 Complex; and the remainder of the one percent of net
265 terminal income shall be deposited in equal amounts in the
266 Capitol Dome and Improvements Fund created under section
267 two, article four, chapter five-a of this code and Cultural
268 Facilities and Capitol Resources Matching Grant Program
269 Fund created under section three, article one of this chapter.

270 (B) For each fiscal year beginning after June 30, 2004:

271 (i) Five hundred thousand dollars of the one percent of
272 net terminal income shall be deposited in the State Treasury
273 in a special fund of the Department of Administration,
274 created under section five, article four, chapter five-a of this
275 code, to be used for construction and maintenance of a
276 parking garage on the State Capitol Complex; and

277 (ii) The remainder of the one percent of net terminal
278 income and all of the one percent of net terminal income
279 described in paragraph (B), subdivision (9), subsection (a),
280 section ten-b of this article shall be distributed as follows:
281 The net terminal income shall be deposited in equal amounts
282 into the Capitol Dome and Capitol Improvements Fund
283 created under section two, article four, chapter five-a of this
284 code and the Cultural Facilities and Capitol Resources
285 Matching Grant Program Fund created under section three,
286 article one, chapter twenty-nine of this code until a total of
287 \$1,500,000 is deposited into the Cultural Facilities and
288 Capitol Resources Matching Grant Program Fund; thereafter,
289 the remainder shall be deposited into the Capitol Dome and
290 Capitol Improvements Fund.

291 (d) Each licensed racetrack shall maintain in its account
292 an amount equal to or greater than the gross terminal income
293 from its operation of video lottery machines, to be
294 electronically transferred by the commission on dates
295 established by the commission. Upon a licensed racetrack's
296 failure to maintain this balance, the commission may disable
297 all of a licensed racetrack's video lottery terminals until full
298 payment of all amounts due is made. Interest shall accrue on
299 any unpaid balance at a rate consistent with the amount
300 charged for state income tax delinquency under chapter
301 eleven of this code. The interest shall begin to accrue on the
302 date payment is due to the commission.

303 (e) The commission's central control computer shall keep
304 accurate records of all income generated by each video
305 lottery terminal. The commission shall prepare and mail to
306 the licensed racetrack a statement reflecting the gross
307 terminal income generated by the licensee's video lottery
308 terminals. Each licensed racetrack shall report to the
309 commission any discrepancies between the commission's
310 statement and each terminal's mechanical and electronic
311 meter readings. The licensed racetrack is solely responsible

312 for resolving income discrepancies between actual money
313 collected and the amount shown on the accounting meters or
314 on the commission's billing statement.

315 (f) Until an accounting discrepancy is resolved in favor
316 of the licensed racetrack, the commission may make no credit
317 adjustments. For any video lottery terminal reflecting a
318 discrepancy, the licensed racetrack shall submit to the
319 commission the maintenance log which includes current
320 mechanical meter readings and the audit ticket which
321 contains electronic meter readings generated by the
322 terminal's software. If the meter readings and the
323 commission's records cannot be reconciled, final disposition
324 of the matter shall be determined by the commission. Any
325 accounting discrepancies which cannot be otherwise resolved
326 shall be resolved in favor of the commission.

327 (g) Licensed racetracks shall remit payment by mail if the
328 electronic transfer of funds is not operational or the
329 commission notifies licensed racetracks that remittance by
330 this method is required. The licensed racetracks shall report
331 an amount equal to the total amount of cash inserted into
332 each video lottery terminal operated by a licensee, minus the
333 total value of game credits which are cleared from the video
334 lottery terminal in exchange for winning redemption tickets,
335 and remit the amount as generated from its terminals during
336 the reporting period. The remittance shall be sealed in a
337 properly addressed and stamped envelope and deposited in
338 the United States mail no later than noon on the day when the
339 payment would otherwise be completed through electronic
340 funds transfer.

341 (h) Licensed racetracks may, upon request, receive
342 additional reports of play transactions for their respective
343 video lottery terminals and other marketing information not
344 considered confidential by the commission. The commission
345 may charge a reasonable fee for the cost of producing and
346 mailing any report other than the billing statements.

347 (i) The commission has the right to examine all accounts,
348 bank accounts, financial statements and records in a licensed
349 racetrack's possession, under its control or in which it has an
350 interest and the licensed racetrack shall authorize all third
351 parties in possession or in control of the accounts or records
352 to allow examination of any of those accounts or records by
353 the commission.

§29-22A-10c. Surcharge; Capital Reinvestment Fund.

1 (a) For all fiscal years beginning on or after July 1, 2001,
2 there shall be imposed a surcharge of ten percent against the
3 excess of total net terminal income generated from a licensed
4 racetrack for that fiscal year over total net terminal income
5 from that licensed racetrack for the fiscal year ending June
6 30, 2001.

7 (b) A Capital Reinvestment Fund is hereby created within
8 the Lottery Fund. Forty-two percent of the surcharge amount
9 attributable to each racetrack shall be retained by the
10 commission and deposited into a separate Capital
11 Reinvestment Account for that licensed racetrack. For each
12 dollar expended by a licensed racetrack for capital
13 improvements at the racetrack, at the location of any amenity
14 associated with the licensed racetrack's destination resort
15 facility operations, or at adjacent facilities owned by the
16 licensee, having a useful life of three or more years and
17 placed in service after April 1, 2001, the licensed racetrack
18 shall receive \$1 in recoupment from its Capital Reinvestment
19 Fund Account: *Provided*, That in the case of thoroughbred
20 horse tracks, four cents of every dollar in recoupment shall be
21 reserved into a separate account, which shall only be spent on
22 capital improvements and upgrading to facilities used for the
23 housing and care of horses, facilities located inside the
24 perimeter of the racing surface, including the surface thereof,
25 facilities used for housing persons responsible for the care of
26 horses, and that any such capital improvements and

27 upgrading shall be subject to recoupment under this section
 28 only if they have been approved by the Horsemen's
 29 Benevolent and Protective Association acting on behalf of the
 30 horsemen: *Provided, however,* That in the case of greyhound
 31 race tracks, four cents of every dollar in recoupment shall be
 32 spent on capital improvements and upgrading in the kennel
 33 area or other areas at the track. If a licensed racetrack's
 34 unrecouped capital improvements exceed its capital
 35 reinvestment fund account at the end of any fiscal year, the
 36 excess improvements may be carried forward to fifteen
 37 subsequent fiscal years.

38 (c) Fifty-eight percent of the surcharge amount plus any
 39 moneys remaining in a racetrack's Capital Reinvestment
 40 Fund Account at the end of any fiscal year shall be deposited
 41 in the State Excess Lottery Revenue Fund created in section
 42 eighteen-a, article twenty-two of this chapter.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-19. Consent to presence of law-enforcement officers; wagering limits; operations and services; posting of betting limits.

1 (a) *Consent to presence of law-enforcement officers.* --
 2 Any individual entering the gaming facility shall be advised
 3 by the posting of a notice or other suitable means of the
 4 possible presence of state, county or municipal
 5 law-enforcement officers and by entering the gaming facility
 6 impliedly consents to the presence of the law-enforcement
 7 officers.

8 (b) *Commission discretion in gaming operations.* --
 9 Video lottery terminals operated at the gaming facility may
 10 allow minimum and maximum wagers on a single game the
 11 amounts determined by the license in the exercise of its
 12 business judgment subject to the approval of the commission.

13 (1) Subject to the approval of the commission, the
14 gaming facility licensee shall, with respect to West Virginia
15 Lottery table games, establish the following:

16 (A) Maximum and minimum wagers;

17 (B) Advertising and promotional activities;

18 (C) Hours of operation;

19 (D) The days during which games may be played; and

20 (2) The commission may consider multiple factors,
21 including, but not limited to, industry standards, outside
22 competition and any other factors as determined by the
23 commission to be relevant in its decision to approve the
24 gaming facility's determination of those items listed in
25 subdivision (1) of this subsection.

26 (c) *Setting of operations.* -- Notwithstanding anything to
27 the contrary contained elsewhere in this chapter, the
28 commission may establish the following parameters for
29 commission regulated lottery games of any kind which is
30 played at a licensed gaming facility:

31 (1) Minimum and maximum payout percentages;

32 (2) Any probability limits of obtaining the maximum
33 payout for a particular play; and

34 (3) Limitations on the types and amounts of financial
35 transactions, including extension of credit to a patron, which
36 a gaming facility can enter into with its patrons.

37 (d) *Posting of betting limits.* -- A gaming facility shall
38 conspicuously post a sign at each West Virginia Lottery table
39 game indicating the permissible minimum and maximum

40 wagers pertaining at that table. A gaming facility licensee
41 may not require any wager to be greater than the stated
42 minimum or less than the stated maximum. However, any
43 wager actually made by a patron and not rejected by a
44 gaming facility licensee prior to the commencement of play
45 shall be treated as a valid wager.

§29-25-22. Historic Resort Hotel Fund; allocation of adjusted gross receipts; disposition of license fees.

1 (a) There is hereby created a special fund in the State
2 Treasury which shall be designated and known as the
3 Historic Resort Hotel Fund. Thirty-six percent of the gross
4 terminal income received by the commission under section
5 twenty of this article and thirty percent of the adjusted gross
6 receipts received by the commission under section
7 twenty-one of this article shall be deposited with the State
8 Treasurer and placed in the Historic Resort Hotel Fund. The
9 fund shall be an interest-bearing account with interest to be
10 credited to and deposited in the Historic Resort Hotel Fund.

11 (b) All expenses of the commission shall be paid from the
12 Historic Resort Hotel Fund, including reimbursement of the
13 State Police for activities performed at the request of the
14 commission in connection with background investigations or
15 enforcement activities pursuant to this article. At no time
16 may the commission's expenses under this article exceed
17 fifteen percent of the total of the annual revenue received
18 from the licensee under this article, including all license fees,
19 taxes or other amounts required to be deposited in the
20 Historic Resort Hotel Fund.

21 (c) An Historic Resort Hotel Modernization Fund is
22 hereby created within the Historic Resort Hotel Fund. For all
23 fiscal years beginning on or after July 1, 2011, the
24 commission shall deduct two and one-half percent from gross
25 terminal income received by the commission under section

26 twenty of this article for the fiscal year and deposit these
27 amounts into a separate facility modernization account
28 maintained within the Historic Resort Hotel Modernization
29 Fund for each historic resort hotel. For each dollar expended
30 by a historic resort hotel for video lottery or table gaming
31 facility modernization improvements at the historic resort
32 hotel, having a useful life of three or more years and placed
33 in service after April 1, 2011, the historic resort hotel shall
34 receive \$1 in recoupment from its facility modernization
35 account. For purposes of this section, the term “video lottery
36 or table gaming facility modernization improvements”
37 include acquisition of computer hardware and software,
38 communications and Internet access equipment, security and
39 surveillance equipment, video lottery terminals and other
40 electronic equipment or other equipment designed to
41 modernize the facility.

42 (d) The balance of the Historic Resort Hotel Fund shall
43 become net income and shall be divided as follows:

44 (1) Sixty-four percent of the Historic Resort Hotel Fund
45 net income shall be paid into the General Revenue Fund to be
46 appropriated by the Legislature;

47 (2) Nineteen percent of the Historic Resort Hotel Fund
48 net income shall be paid into the State Debt Reduction Fund
49 established in section twenty-seven, article twenty-two-c of
50 this chapter to be appropriated by the Legislature;

51 (3) The Tourism Promotion Fund established in section
52 twelve, article two, chapter five-b of this code shall receive
53 three percent of the Historic Resort Hotel Fund net income;

54 (4) The county where the gaming facility is located shall
55 receive four percent of the Historic Resort Hotel Fund net
56 income;

57 (5) The municipality where the gaming facility is located
58 or the municipality closest to the gaming facility by paved
59 road access as of the effective date of the reenactment of this
60 section by the 2009 regular session of the Legislature shall
61 receive two and one-half percent of the Historic Resort Hotel
62 Fund net income;

63 (6) The municipalities within the county where the
64 gaming facility is located, except for the municipality
65 receiving funds under subdivision (5) of this subsection, shall
66 receive equal shares of two and one-half percent of the
67 Historic Resort Hotel Fund net income;

68 (7) Each county commission in the state that is not
69 eligible to receive a distribution under subdivision (4) of this
70 subsection shall receive equal shares of two and one-half
71 percent of the Historic Resort Hotel Fund net income:
72 *Provided*, That funds transferred to the county commission
73 under this subdivision shall be used only to pay regional jail
74 expenses and the costs of infrastructure improvements and
75 other capital improvements; and

76 (8) The governing body of each municipality in the state
77 that is not eligible to receive a distribution under subdivisions
78 (5) and (6) of this subsection shall receive equal shares of
79 two and one-half percent of the Historic Resort Hotel Fund
80 net income: *Provided*, That funds transferred to
81 municipalities under this subdivision shall be used only to
82 pay for debt reduction in municipal police and fire pension
83 funds and the costs of infrastructure improvements and other
84 capital improvements.

85 (e) Notwithstanding any provision of this article to the
86 contrary, all limited gaming facility license fees and license
87 renewal fees received by the commission pursuant to section
88 nine of this article shall be deposited into the Community-
89 Based Service Fund created in section twenty-seven, article
90 twenty-two-c of this chapter.

91 (f) With the exception of the license fees and license
 92 renewal fees received by the commission pursuant to section
 93 nine of this article, all revenues received from licensees and
 94 license applicants under this article shall be retained by the
 95 commission as reimbursement for the licensing process.



CHAPTER 73

**(Com. Sub. for H. B. 2885 - By Delegates Ellem,
 D. Campbell, Perdue, Poore, Barill, Fleischauer,
 Border, Moore, Hatfield and Rodighiero)**

[Passed March 11, 2011; in effect from passage.]
 [Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §44A-1-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §44A-1-15, all relating to the eligibility of guardians or conservators to be hired to provide care to a protected person through employment with a behavioral health provider in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §44A-1-8 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 §44A-1-15, all to read as follows:

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-8. Persons and entities qualified to serve as guardian and conservator; default guardian and conservator; exemptions from conservator appointment.

1 (a) Any adult individual may be appointed to serve as a
2 guardian, a conservator or both upon a showing by the
3 individual of the necessary education, ability and background
4 to perform the duties of guardian or conservator and upon a
5 determination by the court that the individual is capable of
6 providing an active and suitable program of guardianship or
7 conservatorship for the protected person. The individual may
8 not be employed by or affiliated with any public agency,
9 entity or facility that is providing substantial services or
10 financial assistance to the protected person except as set forth
11 in section fifteen of this article.

12 (b) The court may, after first determining it to be in the
13 best interest of the protected person, appoint coguardians,
14 coconservators or both.

15 (c) Any person being considered by a court for
16 appointment as a guardian or conservator shall provide
17 information regarding any crime, other than traffic offenses,
18 of which he or she was convicted and the court or mental
19 hygiene commissioner may order a background check to be
20 conducted by the State Police or county sheriff. The court
21 shall consider this information in determining the person's
22 fitness to be appointed a guardian or conservator.

23 (d) Any nonprofit corporation chartered in this state and
24 licensed as set forth in subsection (e) of this section or a
25 public agency that is not a provider of health care services to
26 the protected person may be appointed to serve as a guardian,
27 a conservator or both so long as the entity is capable of
28 providing an active and suitable program of guardianship or
29 conservatorship for the protected person and is not otherwise

30 providing substantial services or financial assistance to the
31 protected person.

32 (e) A nonprofit corporation chartered in this state may be
33 appointed to serve as a guardian or conservator or as a
34 limited or temporary guardian or conservator for a protected
35 person if it is licensed to do so by the Secretary of Health and
36 Human Resources. The secretary shall propose legislative
37 rules for promulgation in accordance with the provisions of
38 chapter twenty-nine-a of this code, for the licensure of
39 nonprofit corporations and shall provide for the review of the
40 licenses. The rules shall, at a minimum, establish standards
41 to assure that any corporation licensed for guardianship or
42 conservatorship:

43 (1) Has sufficient fiscal and administrative resources to
44 perform the fiduciary duties and make the reports and
45 accountings required by this chapter;

46 (2) Will respect and maintain the dignity and privacy of
47 the protected person;

48 (3) Will protect and advocate the legal human rights of
49 the protected person;

50 (4) Will assure that the protected person is receiving
51 appropriate educational, vocational, residential and medical
52 services in the setting least restrictive of the individual's
53 personal liberty;

54 (5) Will encourage the protected person to participate to
55 the maximum extent of his or her abilities in all decisions
56 affecting him or her and to act in his or her own behalf on all
57 matters in which he or she is able to do so;

58 (6) Does not provide educational, vocational, residential
59 or medical services to the protected person; and

60 (7) Has written provisions in effect for the distribution of
61 assets and for the appointment of temporary guardians and
62 conservators for any protected persons it serves in the event
63 the corporation ceases to be licensed by the Department of
64 Health and Human Resources or otherwise becomes unable
65 to serve as guardian.

66 (f) A duly licensed nonprofit corporation that has been
67 appointed to serve as a guardian or as a conservator pursuant to
68 the provisions of this article is entitled to compensation in
69 accordance with the provisions of section thirteen of this article.

70 (g) Except as provided in sections thirteen and fifteen of
71 this article, no guardian or conservator nor any officer, agent,
72 director, servant or employee of any guardian or conservator
73 may do business with or in any way profit, either directly or
74 indirectly, from the estate or income of any protected person
75 for whom services are being performed by the guardian or
76 conservator.

77 (h) A person who has an interest as a creditor of a
78 protected person is not eligible for appointment as either a
79 guardian or conservator of the protected person except that a
80 bank or trust company authorized to exercise trust powers or
81 to engage in trust business in this state may be appointed as
82 a conservator if the court determines it is capable of
83 providing suitable conservatorship for the protected person.

84 (i) The Secretary of the Department of Health and Human
85 Resources shall designate the adult protective services
86 division of the county of appointment, or another agency
87 under his or her jurisdiction, to be appointed as guardian
88 when there is no other individual, nonprofit corporation or
89 other public agency that is equally or better qualified and
90 willing to serve. The department may not refuse to accept the
91 guardianship appointment when ordered by the court but may
92 not be appointed as conservator.

93 (j) The sheriff of the county in which a court has
94 jurisdiction shall be appointed as conservator when there is
95 no other individual, nonprofit corporation or other public
96 agency that is equally or better qualified and willing to serve.
97 The sheriff may not refuse to accept the conservatorship
98 appointment when ordered by the court but may not be
99 appointed as guardian.

100 (k) A conservator shall not be appointed when the alleged
101 protected person's total assets are worth less than \$2,000 or
102 the alleged protected person's income is:

103 (1) From the Social Security Administration and a
104 representative payee has been appointed to act in the best
105 interest of the individual;

106 (2) From Medicaid and the only income distributed to the
107 individual is the personal account allotment; or

108 (3) Less than \$50 per month or \$600 per year. In these
109 instances, the guardian, representative payee or health care
110 facility, if there is no other person or entity, shall manage the
111 personal care account or assets.

**§44A-1-15. Eligibility of guardians or conservators employed
pursuant to a Department of Health and Human
Resources waiver program.**

1 (a) A person employed pursuant to a written contract or
2 other employment arrangement with a licensed provider of
3 behavioral health services for the purpose of providing
4 services to a protected person, may be appointed by a court
5 as the guardian or conservator of the protected person if:

6 (1) Payment for services provided under the contract or
7 employment agreement is made pursuant to a waiver
8 program;

9 (2) The person is related to the protected person by blood,
10 marriage or adoption;

11 (3) The contract or arrangement is disclosed in writing to
12 the court, and

13 (4) The court finds that the appointment is in the best
14 interests of the protected person.

15 (b) Without the prior approval of a court, a guardian or
16 conservator may not enter into a written contract or other
17 employment arrangement with a licensed provider of
18 behavioral health services in which the guardian or
19 conservator will receive compensation pursuant to a waiver
20 program.

21 (c) For the purposes of this section:

22 (1) “Behavioral health services” means services provided
23 for the care and treatment of persons with mental illness,
24 intellectual disability, developmental disabilities or alcohol
25 or drug abuse problems in an inpatient, residential or
26 outpatient setting, including, but not limited to, habilitative or
27 rehabilitative interventions or services and cooking, cleaning,
28 laundry and personal hygiene services provided for such
29 care; and

30 (2) “Waiver program” means a West Virginia
31 Department of Health and Human Resource administered
32 waiver program, including, but not limited to, the “MR/DD”
33 or “Intellectual and Developmental Disabilities” waiver
34 program authorized by section 1915(c) of the Social Security
35 Act.

36 (d) A person appointed to serve as a guardian or
37 conservator prior to the effective date of this section, enacted
38 during the 2011 Regular Session of the Legislature, who

39 meets the requirements contained in subsection (a), shall
40 retain his or her authority, powers and duties in that capacity
41 under the provisions of this section: *Provided*, That the
42 guardian or conservator informs the court, in writing, that he
43 or she is employed pursuant to a written contract or other
44 employment arrangement with a licensed provider of
45 behavioral health services under the waiver program.

CHAPTER 74

**(H. B. 3075 - By Delegates Perdue,
Hatfield, Border, Reynolds and Morgan)**

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to increasing the time period in the hold-harmless provision, when distributing state aid to local health departments and basic public health services funds, from three years to four years.

Be it enacted by the Legislature of West Virginia:

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code

3 that are necessary and proper to effectuate the purposes of
4 this chapter. The secretary may appoint or designate advisory
5 councils of professionals in the areas of hospitals, nursing
6 homes, barbers and beauticians, postmortem examinations,
7 mental health and intellectual disability centers and any other
8 areas necessary to advise the secretary on rules.

9 The rules may include, but are not limited to, the
10 regulation of:

11 (a) Land usage endangering the public health: *Provided*,
12 That no rules may be promulgated or enforced restricting the
13 subdivision or development of any parcel of land within
14 which the individual tracts, lots or parcels exceed two acres
15 each in total surface area and which individual tracts, lots or
16 parcels have an average frontage of not less than one hundred
17 fifty feet even though the total surface area of the tract, lot or
18 parcel equals or exceeds two acres in total surface area, and
19 which tracts are sold, leased or utilized only as single-family
20 dwelling units. Notwithstanding the provisions of this
21 subsection, nothing in this section may be construed to abate
22 the authority of the department to: (1) Restrict the
23 subdivision or development of a tract for any more intense or
24 higher density occupancy than a single-family dwelling unit;
25 (2) propose or enforce rules applicable to single-family
26 dwelling units for single-family dwelling unit sanitary
27 sewerage disposal systems; or (3) restrict any subdivision or
28 development which might endanger the public health, the
29 sanitary condition of streams or sources of water supply;

30 (b) The sanitary condition of all institutions and schools,
31 whether public or private, public conveyances, dairies,
32 slaughterhouses, workshops, factories, labor camps, all other
33 places open to the general public and inviting public
34 patronage or public assembly, or tendering to the public any
35 item for human consumption and places where trades or
36 industries are conducted;

37 (c) Occupational and industrial health hazards, the
38 sanitary conditions of streams, sources of water supply,
39 sewerage facilities and plumbing systems and the
40 qualifications of personnel connected with any of those
41 facilities, without regard to whether the supplies or systems
42 are publicly or privately owned; and the design of all water
43 systems, plumbing systems, sewerage systems, sewage
44 treatment plants, excreta disposal methods and swimming
45 pools in this state, whether publicly or privately owned;

46 (d) Safe drinking water, including:

47 (1) The maximum contaminant levels to which all public
48 water systems must conform in order to prevent adverse
49 effects on the health of individuals and, if appropriate,
50 treatment techniques that reduce the contaminant or
51 contaminants to a level which will not adversely affect the
52 health of the consumer. The rule shall contain provisions to
53 protect and prevent contamination of wellheads and well
54 fields used by public water supplies so that contaminants do
55 not reach a level that would adversely affect the health of the
56 consumer;

57 (2) The minimum requirements for: Sampling and
58 testing; system operation; public notification by a public
59 water system on being granted a variance or exemption or
60 upon failure to comply with specific requirements of this
61 section and rules promulgated under this section; record
62 keeping; laboratory certification; as well as procedures and
63 conditions for granting variances and exemptions to public
64 water systems from state public water systems rules; and

65 (3) The requirements covering the production and
66 distribution of bottled drinking water and may establish
67 requirements governing the taste, odor, appearance and other
68 consumer acceptability parameters of drinking water;

69 (e) Food and drug standards, including cleanliness,
70 proscription of additives, proscription of sale and other
71 requirements in accordance with article seven of this chapter as
72 are necessary to protect the health of the citizens of this state;

73 (f) The training and examination requirements for
74 emergency medical service attendants and emergency
75 medical care technician-paramedics; the designation of the
76 health care facilities, health care services and the industries
77 and occupations in the state that must have emergency
78 medical service attendants and emergency medical care
79 technician-paramedics employed and the availability,
80 communications and equipment requirements with respect to
81 emergency medical service attendants and to emergency
82 medical care technician-paramedics: *Provided*, That any
83 regulation of emergency medical service attendants and
84 emergency medical care technician-paramedics may not
85 exceed the provisions of article four-c of this chapter;

86 (g) The health and sanitary conditions of establishments
87 commonly referred to as bed and breakfast inns. For
88 purposes of this article, "bed and breakfast inn" means an
89 establishment providing sleeping accommodations and, at a
90 minimum, a breakfast for a fee: *Provided*, That the secretary
91 may not require an owner of a bed and breakfast providing
92 sleeping accommodations of six or fewer rooms to install a
93 restaurant-style or commercial food service facility:
94 *Provided, however*, That the secretary may not require an
95 owner of a bed and breakfast providing sleeping
96 accommodations of more than six rooms to install a
97 restaurant-type or commercial food service facility if the
98 entire bed and breakfast inn or those rooms numbering above
99 six are used on an aggregate of two weeks or less per year;

100 (h) Fees for services provided by the Bureau for Public
101 Health including, but not limited to, laboratory service fees,
102 environmental health service fees, health facility fees and
103 permit fees;

104 (i) The collection of data on health status, the health
105 system and the costs of health care;

106 (j) Opioid treatment programs duly licensed and
107 operating under the requirements of chapter twenty-seven of
108 this code. The Health Care Authority shall develop new
109 certificate of need standards, pursuant to the provisions of
110 article two-d of this chapter, that are specific for opioid
111 treatment program facilities. No applications for a certificate
112 of need for opioid treatment programs shall be approved by
113 the Health Care Authority as of the effective date of the 2007
114 amendments to this subsection. The secretary shall
115 promulgate revised emergency rules to govern licensed
116 programs: *Provided*, That there is a moratorium on the
117 licensure of new opioid treatment programs that do not have
118 a certificate of need as of the effective date of the 2007
119 amendments to this subsection, which shall continue until the
120 Legislature determines that there is a necessity for additional
121 opioid treatment facilities in West Virginia. The secretary
122 shall file revised emergency rules with the Secretary of State
123 to regulate opioid programs in compliance with subsections
124 (1) through (9), inclusive, of this section: *Provided, however*,
125 That any opioid treatment program facility that has received
126 a certificate of need pursuant to article two-d, of this chapter
127 by the Health Care Authority shall be permitted to proceed to
128 license and operate the facility. All existing opioid treatment
129 programs shall be in compliance within one hundred eighty
130 days of the effective date of the revised emergency rules as
131 required herein. The revised emergency rules shall provide
132 at a minimum:

133 (1) That the initial assessment prior to admission for
134 entry into the opioid treatment program shall include an
135 initial drug test to determine whether an individual is either
136 opioid addicted or presently receiving methadone for an
137 opioid addiction from another opioid treatment program. The
138 patient may be admitted to the program if there is a positive

139 test for either opioids or methadone or there are objective
140 symptoms of withdrawal, or both, and all other criteria set
141 forth in the rule for admission into an opioid treatment
142 program are met: *Provided*, That admission to the program
143 may be allowed to the following groups with a high risk of
144 relapse without the necessity of a positive test or the presence
145 of objective symptoms: Pregnant women with a history of
146 opioid abuse, prisoners or parolees recently released from
147 correctional facilities, former clinic patients who have
148 successfully completed treatment but who believe themselves
149 to be at risk of imminent relapse and HIV patients with a
150 history of intravenous drug use.

151 (2) That within seven days of the admission of a patient,
152 the opioid treatment program shall complete an initial
153 assessment and an initial plan of care. Subsequently, the
154 opioid treatment program shall develop a treatment plan of
155 care by the thirtieth day after admission and attach to the
156 patient's chart no later than five days after such plan is
157 developed. The treatment plan is to reflect that detoxification
158 is an option for treatment and supported by the program.

159 (3) That each opioid treatment program shall report and
160 provide statistics to the Department of Health and Human
161 Resources at least semiannually which includes the total
162 number of patients; the number of patients who have been
163 continually receiving methadone treatment in excess of two
164 years, including the total number of months of treatment for
165 each such patient; the state residency of each patient; the
166 number of patients discharged from the program, including
167 the total months in the treatment program prior to discharge
168 and whether the discharge was for:

169 (A) Termination or disqualification;

170 (B) Completion of a program of detoxification;

171 (C) Voluntary withdrawal prior to completion of all
172 requirements of detoxification as determined by the opioid
173 treatment program; or

174 (D) An unexplained reason.

175 (4) That random drug testing of patients be conducted
176 during the course of treatment. For purposes of these rules,
177 random drug testing shall mean that each patient of an opioid
178 treatment program facility has a statistically equal chance of
179 being selected for testing at random and at unscheduled
180 times. Any refusal to participate in a random drug test shall
181 be considered a positive test: *Provided*, That nothing
182 contained in this section or the legislative rules promulgated
183 in conformity herewith will preclude any opioid treatment
184 program from administering such additional drug tests as
185 determined necessary by the opioid treatment program.

186 (5) That all random drug tests conducted by an opioid
187 treatment program shall, at a minimum, test for the
188 following:

189 (A) Opiates, including oxycodone at common levels of
190 dosing;

191 (B) Methadone and any other medication used by the
192 program as an intervention;

193 (C) Benzodiazepine including diazepam, lorazepam,
194 clonazepam and alprazolam;

195 (D) Cocaine;

196 (E) Methamphetamine or amphetamine; and

197 (F) Other drugs determined by community standards,
198 regional variation or clinical indication.

199 A positive test is a test that results in the presence of any
200 drug or substance listed in this schedule and any other drug
201 or substance prohibited by the opioid treatment program;

202 (6) That a positive drug test result after the first six
203 months in an opioid treatment program shall result in the
204 following:

205 (A) Upon the first positive drug test result, the opioid
206 treatment program shall:

207 (1) Provide mandatory and documented weekly
208 counseling to the patient, which shall include weekly
209 meetings with a counselor who is licensed, certified or
210 enrolled in the process of obtaining licensure or certification
211 in compliance with the rules and on staff at the opioid
212 treatment program;

213 (2) Immediately revoke the take home methadone
214 privilege for a minimum of thirty days; and

215 (B) Upon a second positive drug test result within six
216 months of a previous positive drug test result, the opioid
217 treatment program shall:

218 (1) Provide mandatory and documented weekly
219 counseling, which shall include weekly meetings with a
220 counselor who is licensed, certified or enrolled in the process
221 of obtaining licensure or certification in compliance with the
222 rules and on staff at the opioid treatment program;

223 (2) Immediately revoke the take-home methadone
224 privilege for a minimum of sixty days; and

225 (3) Provide mandatory documented treatment team
226 meetings with the patient.

227 (C) Upon a third positive drug test result within a period
228 of six months the opioid treatment program shall:

229 (1) Provide mandatory and documented weekly
230 counseling, which shall include weekly meetings with a
231 counselor who is licensed, certified or enrolled in the process
232 of obtaining licensure or certification in compliance with the
233 rules and on staff at the opioid treatment program;

234 (2) Immediately revoke the take-home methadone
235 privilege for a minimum of one hundred twenty days; and

236 (3) Provide mandatory and documented treatment team
237 meetings with the patient which will include, at a minimum:
238 The need for continuing treatment; a discussion of other
239 treatment alternatives; and the execution of a contract with
240 the patient advising the patient of discharge for continued
241 positive drug tests.

242 (D) Upon a fourth positive drug test within a six-month
243 period, the patient shall be immediately discharged from the
244 opioid treatment program or, at the option of the patient, shall
245 immediately be provided the opportunity to participate in a
246 twenty-one day detoxification plan, followed by immediate
247 discharge from the opioid treatment program.

248 (7) That the opioid treatment program must report and
249 provide statistics to the Department of Health and Human
250 Resources demonstrating compliance with the random drug
251 test rules including confirmation that:

252 (A) The random drug tests were truly random in regard
253 to both the patients tested and to the times random drug tests
254 were administered by lottery or some other objective standard
255 so as not to prejudice or protect any particular patient.

256 (B) The total number and the number of positive results;
257 and

258 (C) The number of expulsions from the program.

259 (8) That all opioid treatment facilities be open for
260 business seven days per week: *Provided*, That the opioid
261 treatment center may be closed for eight holidays and two
262 training days per year.

263 (9) That the Office of Health Facility Licensure and
264 Certification develop policies and procedures in conjunction
265 with the Board of Pharmacy that will allow access to the
266 Prescription Drug Registry maintained by the Board of
267 Pharmacy before administration of methadone or other
268 treatment in an opioid treatment program, after any positive
269 drug test, and at each ninety-day treatment review to ensure
270 the patient is not seeking prescription medication from
271 multiple sources.

272 (k) The secretary shall propose a rule for legislative
273 approval in accordance with the provisions of article three,
274 chapter twenty-nine-a of this code for the distribution of state
275 aid to local health departments and basic public health
276 services funds.

277 (1) The rule shall include the following provisions:

278 (A) Base allocation amount for each county;

279 (B) Establishment and administration of an emergency
280 fund of no more than two percent of the total annual funds of
281 which unused amounts are to be distributed back to local
282 boards of health at the end of each fiscal year;

283 (C) A calculation of funds utilized for state support of
284 local health departments;

285 (D) Distribution of remaining funds on a per capita
286 weighted population approach which factors coefficients for
287 poverty, health status, population density and health
288 department interventions for each county and a coefficient

289 which encourages counties to merge in the provision of
290 public health services;

291 (E) A hold-harmless provision to provide that each local
292 health department receives no less in state support for a
293 period of four years beginning in the 2009 budget year.

294 (2) The Legislature finds that an emergency exists and,
295 therefore, the secretary shall file an emergency rule to
296 implement the provisions of this section pursuant to the
297 provisions of section fifteen, article three, chapter twenty-
298 nine-a of this code. The emergency rule is subject to the
299 prior approval of the Legislative Oversight Commission on
300 Health and Human Resources Accountability prior to filing
301 with the Secretary of State.

302 (I) Other health-related matters which the department is
303 authorized to supervise and for which the rule-making
304 authority has not been otherwise assigned.



CHAPTER 75

**(Com. Sub. for H. B. 2969 - By Delegates
Boggs, Caputo, White and Fragale)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §16-9D-6 of the Code of West Virginia, 1931, as amended, relating to enforcement of statutes implementing tobacco master settlement agreement; reporting of information; and requiring the Tax Commissioner to disclose, at the request of a nonparticipating tobacco product

manufacturer, the branding information, sales, stamping and other information that is reported to the Tax Commissioner by distributors and stamping agents for products obtained from that nonparticipating manufacturer.

Be it enacted by the Legislature of West Virginia:

That §16-9D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9D. ENFORCEMENT OF STATUTES
IMPLEMENTING TOBACCO
MASTER SETTLEMENT
AGREEMENT.**

§16-9D-6. Reporting of information; escrow installments.

1 (a) *Reporting by distributors and other stamping agents.* --

2 (1) Not later than twenty calendar days after the end of
3 each calendar quarter, and more frequently if directed by the
4 commissioner, each distributor or stamping agent shall
5 submit information required by the commissioner to facilitate
6 compliance with this article, including, but not limited to, a
7 list by brand family of the total number of cigarettes of
8 nonparticipating manufacturers, or in the case of roll your
9 own, the equivalent stick count, for which the distributor or
10 other stamping agent affixed West Virginia stamps and sold
11 in West Virginia during the previous calendar quarter or
12 otherwise paid the tax due for the cigarettes.

13 (2) The distributor or stamping agent shall maintain, and
14 make available to the commissioner, all invoices and
15 documentation of sales of all nonparticipating manufacturer
16 cigarettes sold in West Virginia and any other information
17 relied upon in reporting to the commissioner for a period of
18 five years.

19 (b) *Disclosure of information.* -- The commissioner may
20 disclose to the Attorney General of this state any information
21 received under this article and requested by the Attorney
22 General for purposes of determining compliance with and
23 enforcing the provisions of this article. The commissioner
24 and the Attorney General shall share with each other the
25 information received under this article, and may share the
26 information with other federal, state or local agencies only
27 for purposes of enforcement of this article, article nine-b of
28 this chapter, or corresponding laws of other states. The
29 commissioner is further directed, upon request of a
30 nonparticipating manufacturer, to disclose to that
31 nonparticipating manufacturer any information that has been
32 provided by a distributor or stamping agent as required by
33 this section regarding the purchases from that manufacturer
34 upon which tax stamps have been applied and cigarettes sold
35 in West Virginia.

36 (c) *Verification of qualified escrow fund.* -- The Attorney
37 General may require at any time from the nonparticipating
38 manufacturer proof, from the financial institution in which
39 the manufacturer has established a qualified escrow fund for
40 the purpose of compliance with article nine-b of this chapter,
41 of the amount of money in the fund, exclusive of interest, the
42 amount and date of each deposit to the qualified escrow fund,
43 and the amount and date of each withdrawal from the fund.

44 (d) *Requests for additional information.* -- In addition to
45 the information required to be submitted pursuant to this
46 section, the Attorney General may require a stamping agent,
47 distributor or tobacco product manufacturer to submit any
48 additional information including, but not limited to, samples
49 of the packaging or labeling of each brand family, that is
50 necessary to enable the Attorney General to determine
51 whether a tobacco product manufacturer is in compliance
52 with this article.

53 (e) *Quarterly escrow installments.* -- To promote
 54 compliance with the provisions of this article, a tobacco
 55 product manufacturer subject to the requirements of
 56 subdivision (2), subsection (a), section three of this article,
 57 who, in the opinion of the Attorney General, materially
 58 defaults in fully funding its escrow account timely and then
 59 cures the default shall make escrow deposits for the calendar
 60 year during which the default was cured and ensuing calendar
 61 years in quarterly installments during the year in which the
 62 sales covered by such deposits are made. The Attorney
 63 General may require production of information sufficient to
 64 enable the Attorney General to determine the adequacy of the
 65 amount of the installment deposit.

CHAPTER 76

**(Com Sub. for H. B. 3021 - By Delegates Hatfield,
 Fleischauer, Perdue, Brown, C. Miller, Hall,
 Marshall, D. Campbell, Butcher, Morgan and Border)**

[Passed March 12, 2011; in effect ninety days from passage.]
 [Approved by the Governor on March 30, 2011.]

AN ACT to amend and and reenact §16-42-3, §16-42-5 and §16-42-7 of the Code of West Virginia, 1931, as amended, all relating to the Comprehensive Behavioral Health Commission; adding two members to the Commission; designating nonvoting members; requiring a chairperson be selected by the appointed commission members; prohibiting a chairperson from serving more than two consecutive years; changing the membership of the advisory board; authorizing commission and advisory board members to continue to serve; requiring yearly reports to the Governor and Legislature; and extending the commission three years.

Be it enacted by the Legislature of West Virginia:

That §16-42-3, §16-42-5 and §16-42-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH COMMISSION.

§16-42-3. Comprehensive Behavioral Health Commission.

1 (a) Effective July 1, 2011, the Comprehensive Behavioral
2 Health Commission is reestablished to continue the study of
3 the current behavioral health system of care, including
4 services to adults and children, substance abuse and domestic
5 violence when those conditions have an effect upon or are
6 impacted by the system.

7 (b) The commission consists of:

8 (1) A representative of the circuit and family court
9 system, appointed by the Chief Justice of the West Virginia
10 Supreme Court of Appeals;

11 (2) A representative of the Commissioner of the Division
12 of Corrections;

13 (3) The Commissioner of the Bureau of Senior Services
14 or a designee;

15 (4) The Secretary of the Department of Health and
16 Human Resources or a designee, who is a nonvoting member;

17 (5) The Commissioner of the Bureau for Behavioral
18 Health and Health Facilities or a designee, who is a
19 nonvoting member;

20 (6) The Commissioner of the Bureau for Children and
21 Families or a designee, who is a nonvoting member;

22 (7) The Executive Director of the West Virginia Chapter
23 of the National Alliance on Mental Illness or a designee;

24 (8) The Chancellor for Higher Education or a designee,
25 who is a nonvoting member;

26 (9) One physician with a specialty in psychiatry
27 appointed by the Governor from a list provided by the West
28 Virginia Medical Association;

29 (10) One physician with a specialty in child psychiatry,
30 appointed by the Governor from a list of names provided by
31 the West Virginia Medical Association;

32 (11) One member of the Advisory Board, selected by the
33 Advisory Board, who shall serve as the vice chairperson of
34 the Commission;

35 (12) One member of the House of Delegates, who is a
36 nonvoting member, appointed by the Speaker; and

37 (13) One member of the Senate, who is a nonvoting
38 member, appointed by the President.

39 (c) The commission shall meet at times and places as it
40 finds necessary and shall be staffed by the Bureau for
41 Behavioral Health and Health Facilities.

42 (d) The commission shall elect a chairperson from those
43 who are appointed. The chairperson's term shall be no
44 longer than two consecutive years whereupon the chairperson
45 is to be replaced by a vote of the membership.

46 (e) Effective July 1, 2011, the Comprehensive Behavioral
47 Health Commission Advisory Board is reestablished to serve

48 in a consulting role to the commission with the following
49 members appointed by the Governor:

50 (1) One member from a list provided by the West
51 Virginia Chapter of the National Association of Social
52 Workers;

53 (2) One member from a list provided by the West
54 Virginia Hospital Association;

55 (3) One member who is a psychologist from a list
56 provided by the West Virginia Psychological Association;

57 (4) One citizen member from a list of two nominees from
58 each medical school;

59 (5) One member who is an executive director of a
60 federally qualified health center in West Virginia;

61 (6) One member who is the chief executive officer of a
62 comprehensive behavioral health center;

63 (7) Two members who are the chairperson or the chief
64 executive officer of a not-for-profit corporation with its
65 principal headquarters in West Virginia, that provides
66 residential or non-residential care or treatment for children;
67 and

68 (8) One member from a list provided by the Council of
69 Churches.

70 (f) Those persons serving on the commission and the
71 advisory board on July 1, 2011, may continue serving on the
72 reestablished commission and advisory board and the person
73 so designated as chairperson of the commission shall remain
74 as chairperson until an election occurs as provided in this
75 section.

76 (g) Each member of the commission and advisory board
77 is entitled to receive compensation and expense
78 reimbursement for attending official meetings or engaging in
79 official duties not to exceed the amount paid to members of
80 the Legislature for their interim duties as recommended by
81 the Citizens Legislative Compensation Commission and
82 authorized by law. A commission member may not receive
83 compensation for travel days that are not on the same day as
84 the official meeting or official duties.

§16-42-5. Report.

1 The commission shall submit a report on its study, including
2 recommendations, to the Governor and the Legislature by
3 January 1, 2012, and each January 1 thereafter.

§16-42-7. Termination of commission.

1 The commission and advisory board terminate on June
2 30, 2014.



CHAPTER 77

**(S. B. 349 - By Senators Laird, Snyder,
Nohe, Miller and Klempa)**

[Passed March 9, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-43-1 and §16-43-2, all relating to requiring the inclusion of a bittering agent in coolant and antifreeze; limiting liability; providing exceptions; and providing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-43-1 and §16-43-2, all to read as follows:

ARTICLE 43. ENGINE COOLANT AND ANTIFREEZE.

§16-43-1. Definitions.

1 For the purposes of this article:

2 (1) “Bittering agent” means an aversive agent that renders
3 engine coolant or antifreeze unpalatable; and

4 (2) “Engine coolant” or “antifreeze” means:

5 (A) A substance or preparation, regardless of its origin
6 used as the cooling medium in the cooling system of an
7 internal combustion engine to provide protection against
8 freezing, overheating and corrosion of the cooling system;
9 and

10 (B) A product that is labeled to indicate or imply that it
11 will prevent freezing or overheating of the cooling system of
12 an internal combustion engine.

§16-43-2. Engine coolant and antifreeze; bittering agent required; penalty; exceptions.

1 (a) Any engine coolant or antifreeze manufactured in this
2 state after January 1, 2012, or sold after that date within West
3 Virginia that contains more than ten percent ethylene glycol
4 shall include not less than thirty parts per million and not
5 more than fifty parts per million denatonium benzoate as a

6 bittering agent in order to render the coolant or antifreeze
7 unpalatable.

8 (b) A manufacturer, processor, distributor, recycler or
9 seller of an engine coolant or antifreeze that is required to
10 contain the bittering agent set forth in subsection (a) of this
11 section is not liable to any person for any personal injury,
12 death, property damage, damage to the environment or
13 economic loss that results from the inclusion of denatonium
14 benzoate in any engine coolant or antifreeze, if the inclusion
15 of denatonium benzoate is present in concentrations as
16 mandated by subsection (a) of this section. The limitation on
17 liability does not apply to a particular liability to the extent
18 that the cause of the liability is unrelated to the inclusion of
19 denatonium benzoate in any engine coolant or antifreeze.

20 (c) The provisions of this section do not apply to:

21 (1) The sale of a motor vehicle that contains engine
22 coolant or antifreeze;

23 (2) A wholesale container of engine coolant or antifreeze
24 designed to contain fifty-five gallons or more of engine
25 coolant or antifreeze; and

26 (3) Engine coolant or antifreeze reformulated through on
27 site recycling.

28 (d) Any person who violates any provision of this section
29 is guilty of a misdemeanor and shall be fined not more than
30 \$100. Each day of violation is a separate offense.



CHAPTER 78

(Com. Sub. for H. B. 3094 - By Delegates Smith, Jones, L. Phillips, D. Poling, Longstreth, Shaver, Walker, Fragale, Caputo, Martin and Stagers)

[Passed March 10, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended, relating to requiring the Secretary of the Department of Health and Human Services to use existing department funds to develop a program to compensate employees for personal property loss in work related incidents.

Be it enacted by the Legislature of West Virginia:

That §9-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. COMMISSIONER OF HUMAN SERVICES;
P O W E R S , D U T I E S A N D
RESPONSIBILITIES GENERALLY.**

§9-2-6. Powers of secretary.

1 Within limits of state appropriations and federal grants
2 and subject to provisions of state and federal laws and
3 regulations, the secretary, in addition to all other powers,
4 duties and responsibilities granted and assigned to that office
5 in this chapter and elsewhere by law, is authorized and
6 empowered to:

7 (1) Promulgate, amend, revise and rescind department rules
8 respecting the organization and government of the department
9 and the execution and administration of those powers, duties and
10 responsibilities granted and assigned by this chapter and
11 elsewhere by law to the department and the secretary.

12 (2) Promulgate, amend, revise and rescind department
13 rules and regulations respecting qualifications for receiving
14 the different classes of welfare assistance consistent with or
15 permitted by federal laws, rules and policies, but not
16 inconsistent with state law: *Provided*, That such rules and
17 policies respecting qualifications shall permit the expenditure
18 of state funds to pay for care rendered in any birthing center
19 licensed under the provisions of article two-e, chapter sixteen
20 of this code by a licensed nurse midwife or midwife as this
21 occupation is defined in section one, article fifteen, chapter
22 thirty of this code and which care is within the scope of
23 duties for such licensed nurse midwife or midwife as
24 permitted by the provisions of section seven of said article.

25 (3) Obtain by purchase or lease such grounds, buildings,
26 office or other space, equipment, facilities and services as
27 may be necessary for the execution and administration of
28 those powers, duties and responsibilities granted and
29 assigned by this chapter and elsewhere by law to the
30 department and the secretary.

31 (4) Sign and execute in the name of the state by the State
32 Department of Health and Human Resources any contract or
33 agreement with the federal government or its agencies, other
34 states, political subdivisions of this state, corporations,
35 associations, partnerships or individuals.

36 (5) Establish such special funds as may be required by
37 the federal Social Security Act, as amended, or by any other
38 Act or Acts of Congress, in order for this state to take full
39 advantage of the benefits and provisions thereof relating to
40 the federal-state assistance and federal assistance programs
41 administered by the department and to make payments into

42 and disbursements out of any such special fund or funds in
43 accordance with the requirements of the federal Social
44 Security Act, as amended, or any other Act or Acts of
45 Congress, and in accordance with applicable state law and the
46 objects and purposes of this chapter. In addition, the State
47 Department of Health and Human Resources, through the
48 secretary, is hereby authorized to accept any and all gifts or
49 grants, whether in money, land, services or materials, which
50 gift or gifts, if in the form of moneys, shall be placed in a
51 separate fund and expended solely for the purpose of public
52 assistance programs. No part of this special fund shall revert
53 to the General Revenue Funds of this state. No expenses
54 incurred pursuant to this special fund shall be a charge
55 against the General Funds of this state.

56 (6) Establish within the department an Office of Inspector
57 General for the purpose of conducting and supervising
58 investigations and for the purpose of providing quality
59 control for the programs of the department. The Office of
60 Inspector General shall be headed by the Inspector General
61 who shall report directly to the secretary. Neither the
62 secretary nor any employee of the department may prevent,
63 inhibit or prohibit the Inspector General or his or her
64 employees from initiating, carrying out or completing any
65 investigation, quality control review or other activity
66 oversight of public integrity by the Office of the Inspector
67 General. The secretary shall place within the Office of
68 Inspector General any function he or she deems necessary.
69 Qualification, compensation and personnel practice relating
70 to the employees of the Office of the Inspector General,
71 including that of the position of Inspector General, shall be
72 governed by the classified service provisions of article six,
73 chapter twenty-nine of this code and rules promulgated
74 thereunder. The Inspector General shall supervise all
75 personnel of the Office of Inspector General.

76 (7) Provide at department expense a program of
77 continuing professional, technical and specialized instruction
78 for the personnel of the department.

79 (8) Pay from available funds all or part of the reasonable
80 expenses incurred by a person newly employed by the
81 department in moving his household furniture, effects and
82 immediate family from his or her place of residence in this state
83 to his or her place of employment in this state; and to pay from
84 available funds all or part of the reasonable expenses incurred by
85 a department employee in moving his or her household
86 furniture, effects and immediate family as a result of a
87 reassignment of the employee which is considered desirable,
88 advantageous to and in the best interests of the state, but no part
89 of the moving expenses of any one such employee shall be paid
90 more frequently than once in twelve months or for any
91 movement other than from one place of employment in this state
92 to another place of employment in this state.

93 (9) Establish a program to provide reimbursement to
94 employees of the department whose items of personal
95 property, as defined by the department by policy, are
96 damaged during the course of employment or other work-
97 related activity as a result of aggressive behavior by a client
98 or patient receiving services from the department: *Provided,*
99 That such reimbursement is limited to a maximum amount of
100 \$250.00 per claim.

101 (10) Establish and maintain such institutions as are
102 necessary for the temporary care, maintenance and training
103 of children and other persons.

104 (11) Prepare and submit state plans which will meet the
105 requirements of federal laws, rules governing federal-state
106 assistance and federal assistance and which are not
107 inconsistent with state law.

108 (12) Organize within the department a Board of Review,
109 consisting of a Chairman appointed by the secretary and as
110 many assistants or employees of the department as may be
111 determined by the secretary and as may be required by
112 federal laws and rules respecting state assistance, federal-
113 state assistance and federal assistance, such Board of Review

114 to have such powers of a review nature and such additional
115 powers as may be granted to it by the secretary and as may be
116 required by federal laws and rules respecting federal-state
117 assistance and federal assistance.

118 (13) Provide by rules such review and appeal procedures
119 within the Department of Health and Human Resources as
120 may be required by applicable federal laws and rules
121 respecting state assistance, federal-state assistance and
122 federal assistance and as will provide applicants for, and
123 recipients of all, classes of welfare assistance an opportunity
124 to be heard by the board of Review, a member thereof, or
125 individuals designated by the board, upon claims involving
126 denial, reduction, closure, delay or other action or inaction
127 pertaining to public assistance.

128 (14) Provide by rules, consistent with requirements of
129 applicable federal laws and rules, application forms and
130 application procedures for the various classes of public
131 assistance.

132 (15) Provide locations for making applications for the
133 various classes of public assistance.

134 (16) Provide a citizen or group of citizens an opportunity
135 to file objections and to be heard upon objections to the grant
136 of any class of public assistance.

137 (17) Delegate to the personnel of the department all
138 powers and duties vested in the secretary, except the power
139 and authority to sign contracts and agreements.

140 (18) Make such reports in such form and containing such
141 information as may be required by applicable federal laws
142 and rules respecting federal-state assistance and federal
143 assistance.

144 (19) Invoke any legal, equitable or special remedies for
145 the enforcement of the provisions of this chapter.

CHAPTER 79

**(Com. Sub. for S. B. 330 - By Senators Plymale,
Wells, Jenkins, Foster, Browning, Stollings and Beach)**

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2011.]

AN ACT to repeal §18-13-1 of the Code of West Virginia, 1931, as amended; to repeal §18-23-4a of said code; to repeal §18B-8-3a of said code; to repeal §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code; to amend and reenact §12-1-12d of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-4 and §18B-1B-5 of said code; to amend and reenact §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code; to amend and reenact §18B-2B-3 of said code; to amend and reenact §18B-3-1, §18B-3-3 and §18B-3-4 of said code; to amend and reenact §18B-4-1 of said code; to amend said code by adding thereto a new section, designated §18B-4-2a; to amend and reenact §18B-5-9 of said code; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code; to amend said code by adding thereto four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; to amend and reenact §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code; to amend said code by adding thereto a new section, designated §18B-8-2; to amend and reenact §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code; to amend said code by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7

and §18B-9A-8; and to amend and reenact §18B-10-1 of said code, all relating to public higher education personnel generally; state organizations of higher education; public higher education governance; repealing sunset provision for pilot investment program for Marshall University and West Virginia University; extending authority to increase certain types of investment under certain circumstances; specifying and clarifying rule-making procedures; specifying certain powers and duties of certain higher education organizations; requiring certain governing boards to reach certain graduation rates by certain date; establishing classification and compensation for certain employees; providing legislative purposes and intent; providing certain definitions; requiring creation of certain professional staff positions; setting forth minimum qualifications and specifying duties; requiring organization rulemaking; authorizing certain supplemental retirement, health and welfare benefit plans for certain employees; providing for certain employer and employee matches; authorizing employee payroll deductions; requiring establishment of continuing education and professional development programs for certain employees; setting forth certain employment practices; requiring certain periodic reports; specifying data to be included in reports and designating report due dates; providing certain exceptions to report due dates; requiring periodic reviews of human resources functions at certain higher education organizations; setting forth purposes of reviews; specifying review criteria and designating completion dates; requiring prior notice of reviews and setting forth certain exceptions; authorizing compensatory time off for certain employees in certain instances; setting forth conditions; defining “nonclassified” employees; limiting percentage of employees designated nonclassified and providing certain exceptions; establishing formula for calculating percentage; providing effective date for meeting percentage limits and requiring compliance reports; authorizing certain employment by mutual agreement; setting forth terms, conditions and applicability of agreements; requiring probationary period for

certain employees; authorizing catastrophic leave banks and leave transfer for certain employees; setting forth terms and conditions for participation; codifying certain current practices; authorizing merit salary increases for certain employees under certain conditions; requiring study of certain employment practices; requiring report and specifying data and report due date; requiring faculty salary rules and providing for salary increases in certain instances; authorizing sabbatical leaves for certain professional personnel; specifying terms and conditions for participation; maintaining certain rights and benefits during leaves of absence under certain circumstances; requiring definition of certain terms; requiring notice of employment decisions to probationary faculty members by certain date and providing for hearings in certain instances; stating legislative intent regarding funding for certain employee salary schedules; specifying applicability of certain statutes; establishing certain terms and conditions and providing certain exceptions; providing formulas for making certain salary calculations; requiring certification of certain higher education organizations relating to certain salary funding requirements; specifying applicability of certain rules; requiring review and approval process for certain rules and specifying responsibilities of certain professional personnel relating to rulemaking; providing for funding certain salary schedules; specifying certain consequences and sanctions and providing exceptions; providing short title; requiring maintenance of uniform job classification system; establishing job classification committee and specifying organization, powers and duties; assigning certain other powers and duties relating to job classification; establishing compensation planning and review committee and specifying organization, powers and duties; providing for establishment of market salary structures and minimum salary schedules; requiring periodic updates and specifying certain other related powers and duties; providing for periodic market salary studies and specifying application of study findings; requiring certain salary comparisons and establishing limit on variations of average salaries among employee classes;

specifying authority and duty of Higher Education Policy Commission and Council for Community and Technical College Education over classification and compensation system; requiring promulgation of certain personnel rules by certain date; authorizing emergency rules with prior approval; establishing parameters for rules; specifying mechanisms for correcting identified deficiencies and requiring and authorizing certain sanctions in certain instances; providing for hearing employee appeals; requiring performance evaluations for certain employees; requiring certain training for supervisory personnel; establishing terms and conditions for exercising certain operational flexibilities for governing boards; establishing goals for implementing certain statutes and rules; fixing certain implementation responsibilities; providing for review and approval of governing boards' requests for tuition and fee increases greater than set amounts; removing caps on increases in tuition and fees; making technical corrections; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-13-1 of the Code of West Virginia, 1931, as amended, be repealed; that §18-23-4a of said code be repealed; that §18B-8-3a of said code be repealed; that §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code be repealed; that §12-1-12d of said code be amended and reenacted; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-4 and §18B-1B-5 of said code be amended and reenacted; that §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code be amended and reenacted; that §18B-2B-3 of said code be amended and reenacted; that §18B-3-1, §18B-3-3 and §18B-3-4 of said code be amended and reenacted; that §18B-4-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-4-2a; that §18B-5-9 of said code be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code be amended and

reenacted; that said code be amended by adding thereto four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; that §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-8-2; that §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8; and that §18B-10-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University and West Virginia University.

1 (a) Notwithstanding any provision of this article to the
 2 contrary, the governing boards of Marshall University and
 3 West Virginia University each may invest certain funds with
 4 its respective nonprofit foundation that has been established
 5 to receive contributions exclusively for that university and
 6 which exists on January 1, 2005. Any such investment is
 7 subject to the limitations of this section.

8 (b) A governing board, through its chief financial officer
 9 may enter into agreements, approved as to form by the State
 10 Treasurer, for the investment by its foundation of certain
 11 funds subject to their administration. Any interest or
 12 earnings on the moneys invested is retained by the investing
 13 university.

14 (c) Moneys of a university that may be invested with its
 15 foundation pursuant to this section are those subject to the
 16 administrative control of the university that are collected

17 under an act of the Legislature for specific purposes and do
18 not include any funds made available to the university from
19 the state General Revenue Fund or the funds established in
20 sections eighteen or eighteen-a, article twenty-two, chapter
21 twenty-nine of this code. Moneys permitted to be invested
22 under this section may be aggregated in an investment fund
23 for investment purposes.

24 (d) Of the moneys authorized for investment by this
25 section, Marshall University and West Virginia University
26 each, respectively, may have invested with its foundation at
27 any time not more than the greater of:

28 (1) \$18 million for Marshall University and \$25 million
29 for West Virginia University; or

30 (2) Sixty-five percent of its unrestricted net assets as
31 presented in the statement of net assets for the fiscal year end
32 audited financial reports.

33 (3) Notwithstanding subdivisions (1) and (2) of this
34 subsection, with the approval of the Higher Education Policy
35 Commission, Marshall University may increase the amount
36 invested to \$30 million and West Virginia University may
37 increase the amount invested to \$40 million.

38 (e) Investments by foundations that are authorized under
39 this section shall be made in accordance with and subject to
40 the provisions of the Uniform Prudent Investor Act codified
41 as article six-c, chapter forty-four of this code. As part of its
42 fiduciary responsibilities, each governing board shall
43 establish investment policies in accordance with the Uniform
44 Prudent Investor Act for those moneys invested with its
45 foundation. The governing board shall review, establish and
46 modify, if necessary, the investment objectives as
47 incorporated in its investment policies so as to provide for the
48 financial security of the moneys invested with its foundation.

49 The governing boards shall give consideration to the
50 following:

- 51 (1) Preservation of capital;
- 52 (2) Diversification;
- 53 (3) Risk tolerance;
- 54 (4) Rate of return;
- 55 (5) Stability;
- 56 (6) Turnover;
- 57 (7) Liquidity; and
- 58 (8) Reasonable cost of fees.

59 (f) A governing board shall report annually by December
60 31 to the Governor and to the Joint Committee on
61 Government and Finance on the performance of investments
62 managed by its foundation pursuant to this section.

63 (g) The amendments to this section in the second
64 extraordinary session of the Legislature in 2010 shall apply
65 retroactively so that the authority granted by this section shall be
66 construed as if that authority did not expire on July 1, 2010.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

***§18B-1-2. Definitions.**

1 The following words when used in this chapter and
2 chapter eighteen-c of this code have the meanings ascribed to
3 them unless the context clearly indicates a different meaning:

*CLERK'S NOTE: This section was also amended by Com. Sub. for S. B. 200
(Chapter 82) which passed prior to this act.

4 (1) “Administratively linked community and technical
5 college” means a state institution of higher education
6 delivering community and technical college education and
7 programs which has maintained a contractual agreement to
8 receive essential services from another accredited state
9 institution of higher education prior to July 1, 2008;

10 (2) “Advanced technology center” means a facility
11 established under the direction of an independent community
12 and technical college or the council for the purpose of
13 implementing and delivering education and training programs
14 for high-skill, high-performance Twenty-first Century
15 workplaces;

16 (3) “Board of visitors” means the advisory board
17 previously appointed for the West Virginia Graduate College
18 and the advisory board previously appointed for West
19 Virginia University Institute of Technology, which provide
20 guidance to the Marshall University Graduate College and
21 West Virginia University Institute of Technology,
22 respectively;

23 (4) “Broker” or “brokering” means serving as an agent on
24 behalf of students, employers, communities or responsibility
25 areas to obtain education services not offered at that
26 institution. These services include courses, degree programs
27 or other services contracted through an agreement with a
28 provider of education services either in-state or out-of-state;

29 (5) “Chancellor” means the Chancellor for Higher
30 Education where the context refers to a function of the
31 Higher Education Policy Commission. “Chancellor” means
32 the Chancellor for Community and Technical College
33 Education where the context refers to a function of the West
34 Virginia Council for Community and Technical College
35 Education;

36 (6) “Chancellor for Community and Technical College
37 Education” means the chief executive officer of the West
38 Virginia Council for Community and Technical College
39 Education employed pursuant to section three, article two-b
40 of this chapter;

41 (7) “Chancellor for Higher Education” means the chief
42 executive officer of the Higher Education Policy Commission
43 employed pursuant to section five, article one-b of this
44 chapter;

45 (8) “Collaboration” means entering into an agreement
46 with one or more providers of education services in order to
47 enhance the scope, quality or efficiency of education
48 services;

49 (9) “Community and technical college”, in the singular or
50 plural, means the free-standing community and technical
51 colleges and other state institutions of higher education which
52 deliver community and technical college education. This
53 definition includes Blue Ridge Community and Technical
54 College, Bridgemont Community and Technical College,
55 Eastern West Virginia Community and Technical College,
56 Kanawha Valley Community and Technical College,
57 Mountwest Community and Technical College, New River
58 Community and Technical College, Pierpont Community and
59 Technical College, Southern West Virginia Community and
60 Technical College, West Virginia Northern Community and
61 Technical College and West Virginia University at
62 Parkersburg;

63 (10) “Community and technical college education” means
64 the programs, faculty, administration and funding associated
65 with the delivery of community and technical college
66 education programs;

67 (11) “Community and technical college education
68 program” means any college-level course or program beyond

69 the high school level provided through a public institution of
70 higher education resulting in or which may result in a two-
71 year associate degree award including an associate of arts, an
72 associate of science and an associate of applied science;
73 certificate programs and skill sets; developmental education;
74 continuing education; collegiate credit and noncredit
75 workforce development programs; and transfer and
76 baccalaureate parallel programs. All programs are under the
77 jurisdiction of the council. Any reference to “post-secondary
78 vocational education programs” means community and
79 technical college education programs as defined in this
80 subsection;

81 (12) “Council” means the West Virginia Council for
82 Community and Technical College Education created by
83 article two-b of this chapter;

84 (13) “Dual credit course” or “dual enrollment course”
85 means a credit-bearing college-level course offered in a high
86 school by a state institution of higher education for high
87 school students in which the students are concurrently
88 enrolled and receiving credit at the secondary level.

89 (14) “Essential conditions” means those conditions which
90 shall be met by community and technical colleges as
91 provided in section three, article three-c of this chapter;

92 (15) “Free-standing community and technical colleges”
93 means Southern West Virginia Community and Technical
94 College, West Virginia Northern Community and Technical
95 College, and Eastern West Virginia Community and
96 Technical College, which may not be operated as branches or
97 off-campus locations of any other state institution of higher
98 education;

99 (16) “Governing boards” or “boards” means the
100 institutional boards of governors created by section one,
101 article two-a of this chapter;

102 (17) “Higher Education Policy Commission”, “Policy
103 Commission” or “Commission” means the commission
104 created by section one, article one-b of this chapter;

105 (18) “Independent community and technical college”
106 means a state institution of higher education under the
107 jurisdiction of the Council which is independently accredited,
108 is governed by its own independent governing board, and
109 may not be operated as a branch or off-campus location of
110 any other state institution of higher education. This
111 definition includes Blue Ridge Community and Technical
112 College, Bridgemont Community and Technical College,
113 Eastern West Virginia Community and Technical College,
114 Kanawha Valley Community and Technical College,
115 Mountwest Community and Technical College, New River
116 Community and Technical College, Pierpont Community and
117 Technical College, Southern West Virginia Community and
118 Technical College, West Virginia Northern Community and
119 Technical College, and West Virginia University at
120 Parkersburg;

121 (19) “Institutional compact” means the compact between
122 the commission or council and a state institution of higher
123 education under its jurisdiction, as described in section seven,
124 article one-d of this chapter;

125 (20) “Institutional operating budget” or “operating
126 budget” means for any fiscal year an institution’s total
127 unrestricted education and general funding from all sources,
128 including, but not limited to, tuition and fees and legislative
129 appropriation, and any adjustments to that funding as
130 approved by the commission or council based on
131 comparisons with peer institutions or to reflect consistent
132 components of peer operating budgets;

133 (21) “Peer institutions”, “peer group” or “peers” means
134 public institutions of higher education used for comparison

135 purposes and selected by the commission pursuant to section
136 three, article one-a of this chapter;

137 (22) “Rule” or “rules” means a regulation, standard,
138 policy or interpretation of general application and future
139 effect;

140 (23) “Sponsoring institution” means a state institution of
141 higher education that maintained an administrative link to a
142 community and technical college providing essential services
143 prior to July 1, 2008. This definition includes institutions
144 whose governing boards had under their jurisdiction a
145 community and technical college, regional campus or a
146 division delivering community and technical college
147 education and programs;

148 (24) “State college” means Bluefield State College,
149 Concord University, Fairmont State University, Glenville
150 State College, Shepherd University, West Liberty University
151 or West Virginia State University;

152 (25) “State institution of higher education” means any
153 university, college or community and technical college under
154 the jurisdiction of a governing board as that term is defined
155 in this section;

156 (26) “Statewide network of independently accredited
157 community and technical colleges” or “community and
158 technical college network” means the state institutions of
159 higher education under the jurisdiction of the West Virginia
160 Council for Community and Technical College Education
161 which are independently accredited, each governed by its
162 own independent governing board, and each having a core
163 mission of providing affordable access to and delivering high
164 quality community and technical education in every region of
165 the state;

166 (27) “Vice Chancellor for Administration” means the
167 person employed in accordance with section two, article four
168 of this chapter. Any reference in this chapter or chapter
169 eighteen-c of this code to “Senior Administrator” means Vice
170 Chancellor for Administration;

171 (28) “Vice Chancellor for Human Resources” means the
172 person employed by the commission and the council jointly
173 pursuant to section two-a, article four of this chapter. The
174 person employed as senior director of human resources by
175 the commission on January 1, 2011, becomes the Vice
176 Chancellor for Human Resources on the effective date of this
177 section; and

178 (29) “West Virginia Consortium for Undergraduate
179 Research and Engineering” or “West Virginia CURE” means
180 the collaborative planning group established by article one-c
181 of this chapter.

§18B-1-6. Rulemaking.

1 (a) The commission is hereby empowered to promulgate,
2 adopt, amend or repeal rules, in accordance with article three-
3 a, chapter twenty-nine-a of this code, subject to section three
4 of this article.

5 (b) The council is hereby empowered to promulgate,
6 adopt, amend or repeal rules in accordance with article three-
7 a, chapter twenty-nine-a of this code, subject to section three
8 of this article. This grant of rule-making power extends only
9 to those areas over which the council has been granted
10 specific authority and jurisdiction by law.

11 (c) As it relates to the authority granted to governing
12 boards of state institutions of higher education to promulgate,
13 adopt, amend or repeal any rule under this code:

14 (1) “Rule” means any regulation, guideline, directive,
15 standard, statement of policy or interpretation of general
16 application which has institution-wide effect or which affects
17 the rights, privileges or interests of employees, students or
18 citizens. Any regulation, guideline, directive, standard,
19 statement of policy or interpretation of general application
20 that meets this definition is a rule for the purposes of this
21 section.

22 (2) Regulations, guidelines or policies established for
23 individual units, divisions, departments or schools of the
24 institution, which deal solely with the internal management
25 or responsibilities of a single unit, division, department or
26 school or with academic curricular policies that do not
27 constitute a mission change for the institution, are excluded
28 from this subsection, except for the requirements relating to
29 posting.

30 (3) The commission and council each shall promulgate a
31 rule to guide the development and approval of rules made by
32 their respective governing boards, including the governing
33 boards of Marshall University and West Virginia University.
34 The rules promulgated by the commission and council shall
35 include, but are not limited to, the following provisions
36 which shall be included in the rule on rules adopted by each
37 governing board of a state institution of higher education:

38 (A) A procedure to ensure that public notice is given and
39 that the right of interested parties to have a fair and adequate
40 opportunity to respond is protected, including providing for
41 a thirty-day public comment period prior to final adoption of
42 a rule;

43 (B) Designation of a single location where all proposed
44 and approved rules, guidelines and other policy statements
45 are posted and can be accessed by the public;

46 (C) A procedure to maximize Internet access to all
47 proposed and approved rules, guidelines and other policy
48 statements to the extent technically and financially feasible;
49 and

50 (D) A procedure for the governing board to follow in
51 submitting its rules for review and approval to the
52 commission and/or council, as appropriate, except the
53 following conditions apply for the governing boards of
54 Marshall University and West Virginia University:

55 (i) The governing boards shall submit rules for review
56 and comment to the commission.

57 (ii) The commission shall return to the governing board
58 its comments and suggestions within thirty days of receiving
59 the rule.

60 (iii) If a governing board receives comments or
61 suggestions on a rule from the commission, it shall record
62 these as part of the minute record. The rule is not effective
63 and may not be implemented until the governing board holds
64 a meeting and places on the meeting agenda the comments it
65 has received from the commission.

66 (d) Nothing in this section requires that any rule
67 reclassified or transferred by the commission or the council
68 under this section be promulgated again under the procedures
69 set out in article three-a, chapter twenty-nine-a of this code
70 unless the rule is amended or modified.

71 (e) The commission and council each shall file with the
72 Legislative Oversight Commission on Education
73 Accountability any rule it proposes to promulgate, adopt,
74 amend or repeal under the authority of this article.

75 (f) The governing boards shall promulgate and adopt any
76 rule which they are required to adopt by this chapter or

77 chapter eighteen-c of this code no later than July 1, 2011
78 unless a later date is specified. On and after this date:

79 (1) Any rule of a governing board which meets the
80 definition set out in subsection (c) of this section and which
81 has not been promulgated and adopted by formal vote of the
82 appropriate governing board is void and may not be enforced;

83 (2) Any authority granted by this code which inherently
84 requires the governing board to promulgate and adopt a rule
85 is void until the governing board complies with this section.

86 (g) Within thirty days of the adoption of a rule, including
87 repeal or amendment of an existing rule, and before the
88 change is implemented, a governing board shall furnish a
89 copy of each rule which it has adopted to the commission or
90 the council, respectively, for review and approval, except the
91 governing boards of Marshall University and West Virginia
92 University are subject to subsection (c) of this section.

93 (h) Annually, by October 1, each governing board shall
94 file with the commission or the council, as appropriate, a list
95 of all rules that were in effect for that institution on July 1 of
96 that year, including the most recent date on which each rule
97 was considered and adopted, amended or repealed by the
98 governing board. For all rules adopted, amended or repealed
99 after the effective date of this section, the list shall include a
100 statement by the chair of the governing board certifying that
101 the governing board has complied with this section when
102 each listed rule was promulgated and adopted.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve the

3 goals, objectives and priorities found in section one-a, article
4 one and article one-d of this chapter. The commission shall
5 exercise its authority and carry out its responsibilities in a
6 manner that is consistent and not in conflict with the powers
7 and duties assigned by law to the West Virginia Council for
8 Community and Technical College Education and the powers
9 and duties assigned to the governing boards. To that end, the
10 commission has the following powers and duties relating to
11 the governing boards under its jurisdiction:

12 (1) Develop, oversee and advance the public policy
13 agenda pursuant to article one-d of this chapter to address
14 major challenges facing the state, including, but not limited
15 to, the following:

16 (A) The goals, objectives and priorities established in this
17 chapter including specifically those goals, objectives and
18 priorities pertaining to the compacts created pursuant to
19 section seven, article one-d of this chapter; and

20 (B) Development and implementation of the master plan
21 described in section five, article one-d of this chapter for the
22 purpose of accomplishing the mandates of this section;

23 (2) Develop, oversee and advance the promulgation and
24 implementation of a financing rule for state institutions of
25 higher education under its jurisdiction. The rule shall meet
26 the following criteria:

27 (A) Provide for an adequate level of educational and
28 general funding for institutions pursuant to section five,
29 article one-a of this chapter;

30 (B) Serve to maintain institutional assets, including, but
31 not limited to, human and physical resources and eliminating
32 deferred maintenance; and

33 (C) Invest and provide incentives for achieving the priority
34 goals in the public policy agenda, including, but not limited
35 to, those found in section one-a, article one and article one-d
36 of this chapter;

37 (3) In collaboration with the council, create a policy
38 leadership structure capable of the following actions:

39 (A) Developing, building public consensus around and
40 sustaining attention to a long-range public policy agenda. In
41 developing the agenda, the commission and council shall
42 seek input from the Legislature and the Governor and
43 specifically from the state Board of Education and local
44 school districts in order to create the necessary linkages to
45 assure smooth, effective and seamless movement of students
46 through the public education and post-secondary education
47 systems and to ensure that the needs of public school courses
48 and programs can be fulfilled by the graduates produced and
49 the programs offered;

50 (B) Ensuring that the governing boards carry out their duty
51 effectively to govern the individual institutions of higher
52 education; and

53 (C) Holding the governing boards and the higher
54 education systems as a whole accountable for accomplishing
55 their missions and implementing their compacts;

56 (4) Develop and adopt each compact for the governing
57 boards under its jurisdiction;

58 (5) Review and adopt the annual updates of the
59 institutional compacts;

60 (6) Serve as the accountability point to state policymakers:

61 (A) The Governor for implementation of the public policy
62 agenda; and

63 (B) The Legislature by maintaining a close working
64 relationship with the legislative leadership and the
65 Legislative Oversight Commission on Education
66 Accountability;

67 (7) Jointly with the council, promulgate legislative rules
68 pursuant to article three-a, chapter twenty-nine-a of this code
69 to fulfill the purposes of section five, article one-a of this
70 chapter;

71 (8) Establish and implement a peer group for each
72 institution as described in section three, article one-a of this
73 chapter;

74 (9) Establish and implement the benchmarks and
75 performance indicators necessary to measure institutional
76 progress in achieving state policy priorities and institutional
77 missions pursuant to section seven, article one-d of this
78 chapter;

79 (10) Report to the Legislature and to the Legislative
80 Oversight Commission on Education Accountability annually
81 during the January interim meeting period on a date and at a
82 time and location to be determined by the President of the
83 Senate and the Speaker of the House of Delegates. The
84 report shall address at least the following:

85 (A) The performance of its system of higher education
86 during the previous fiscal year, including, but not limited to,
87 progress in meeting the goals, objectives and priorities set
88 forth in section one-a, article one and article one-d of this
89 chapter and in the commission's master plan and institutional
90 compacts;

91 (B) The commission's priorities for new operating and
92 capital investments and the justification for the priority;

93 (C) Recommendations of the commission for statutory
94 changes necessary or expedient to achieve state goals,
95 objectives and priorities;

96 (11) Establish a formal process for identifying capital
97 investment needs and for determining priorities for these
98 investments for consideration by the Governor and the
99 Legislature as part of the appropriation request process
100 pursuant to article nineteen of this chapter.
101

102 (12) Develop standards and evaluate governing board
103 requests for capital project financing in accordance with
104 article nineteen of this chapter;

105 (13) Ensure that governing boards manage capital projects
106 and facilities needs effectively, including review and
107 approval or disapproval of capital projects, in accordance
108 with article nineteen of this chapter.

109 (14) Acquire legal services as considered necessary,
110 including representation of the commission, its, governing
111 boards, employees and officers before any court or
112 administrative body, notwithstanding any other provision of
113 this code to the contrary. The counsel may be employed
114 either on a salaried basis or on a reasonable fee basis. In
115 addition, the commission may, but is not required to, call
116 upon the Attorney General for legal assistance and
117 representation as provided by law;

118 (15) Employ a Chancellor for Higher Education pursuant
119 to section five of this article;

120 (16) Employ other staff as necessary and appropriate to
121 carry out the duties and responsibilities of the commission
122 and the council, in accordance with article four of this
123 chapter;

124 (17) Provide suitable offices in Kanawha County for the
125 chancellor, vice chancellors and other staff;

126 (18) Advise and consent in the appointment of the
127 presidents of the institutions of higher education under its
128 jurisdiction pursuant to section six of this article. The role of
129 the commission in approving an institutional president is to
130 assure through personal interview that the person selected
131 understands and is committed to achieving the goals,
132 objectives and priorities set forth in the compact, in section
133 one-a, article one and article one-d of this chapter;

134 (19) Approve the total compensation package from all
135 sources for presidents of institutions under its jurisdiction, as
136 proposed by the governing boards. The governing boards
137 must obtain approval from the commission of the total
138 compensation package both when institutional presidents are
139 employed initially and afterward when any change is made in
140 the amount of the total compensation package;

141 (20) Establish and implement the policy of the state to
142 assure that parents and students have sufficient information
143 at the earliest possible age on which to base academic
144 decisions about what is required for students to be successful
145 in college, other post-secondary education and careers
146 related, as far as possible, to results from current assessment
147 tools in use in West Virginia;

148 (21) Approve and implement a uniform standard jointly with
149 the council to determine which students shall be placed in
150 remedial or developmental courses. The standard shall be
151 aligned with college admission tests and assessment tools used
152 in West Virginia and shall be applied uniformly by the
153 governing boards throughout the public higher education
154 system. The chancellors shall develop a clear, concise
155 explanation of the standard which they shall communicate to the

156 state board of education and the state superintendent of
157 Schools;

158 (22) Jointly with the council, develop and implement an
159 oversight plan to manage systemwide technology including,
160 but not limited to, the following:

161 (A) Expanding distance learning and technology networks
162 to enhance teaching and learning, promote access to quality
163 educational offerings with minimum duplication of effort;
164 and

165 (B) Increasing the delivery of instruction to nontraditional
166 students, to provide services to business and industry and
167 increase the management capabilities of the higher education
168 system.

169 (C) Notwithstanding any other provision of law or this
170 code to the contrary, the council, commission and governing
171 boards are not subject to the jurisdiction of the Chief
172 Technology Officer for any purpose;

173 (23) Establish and implement policies and procedures to
174 ensure that a student may transfer and apply toward the
175 requirements for a bachelor's degree the maximum number
176 of credits earned at any regionally accredited in-state or out-
177 of-state community and technical college with as few
178 requirements to repeat courses or to incur additional costs as
179 are consistent with sound academic policy;

180 (24) Establish and implement policies and procedures to
181 ensure that a student may transfer and apply toward the
182 requirements for a degree the maximum number of credits
183 earned at any regionally accredited in-state or out-of-state
184 higher education institution with as few requirements to
185 repeat courses or to incur additional costs as are consistent
186 with sound academic policy;

187 (25) Establish and implement policies and procedures to
188 ensure that a student may transfer and apply toward the
189 requirements for a master's degree the maximum number of
190 credits earned at any regionally accredited in-state or out-of-
191 state higher education institution with as few requirements to
192 repeat courses or to incur additional costs as are consistent
193 with sound academic policy;

194 (26) Establish and implement policies and programs, in
195 cooperation with the council and the governing boards,
196 through which a student who has gained knowledge and
197 skills through employment, participation in education and
198 training at vocational schools or other education institutions,
199 or Internet-based education programs, may demonstrate by
200 competency-based assessment that he or she has the
201 necessary knowledge and skills to be granted academic credit
202 or advanced placement standing toward the requirements of
203 an associate's degree or a bachelor's degree at a state
204 institution of higher education;

205 (27) Seek out and attend regional, national and
206 international meetings and forums on education and
207 workforce development-related topics as, in the
208 commission's discretion, are critical for the performance of
209 their duties as members, for the purpose of keeping abreast
210 of education trends and policies to aid it in developing the
211 policies for this state to meet the established education goals,
212 objectives and priorities pursuant to section one-a, article one
213 and article one-d of this chapter;

214 (28) Promulgate and implement a rule for higher education
215 governing boards and institutions to follow when considering
216 capital projects pursuant to article nineteen of this chapter;

217 (29) Consider and submit to the appropriate agencies of
218 the executive and legislative branches of state government an
219 appropriation request that reflects recommended

220 appropriations for the commission and the governing boards
221 under its jurisdiction. The commission shall submit as part
222 of its appropriation request the separate recommended
223 appropriation request it received from the council, both for
224 the council and for the governing boards under the council's
225 jurisdiction. The commission annually shall submit the
226 proposed allocations based on each institution's progress
227 toward meeting the goals of its compact;

228 (30) The commission may assess institutions under its
229 jurisdiction, including Marshall University and West Virginia
230 University, for the payment of expenses of the commission
231 or for the funding of statewide higher education services,
232 obligations or initiatives related to the goals set forth for the
233 provision of public higher education in the state;

234 (31) Promulgate rules allocating reimbursement of
235 appropriations, if made available by the Legislature, to
236 governing boards for qualifying noncapital expenditures
237 incurred in providing services to students with physical,
238 learning or severe sensory disabilities;

239 (32) Make appointments to boards and commissions
240 where this code requires appointments from the State College
241 System Board of Directors or the University of West Virginia
242 System Board of Trustees which were abolished effective
243 June 30, 2000, except in those cases where the required
244 appointment has a specific and direct connection to the
245 provision of community and technical college education, the
246 appointment shall be made by the council. Notwithstanding
247 any provisions of this code to the contrary, the commission
248 or the council may appoint one of its own members or any
249 other citizen of the state as its designee. The commission and
250 council shall appoint the total number of persons in the
251 aggregate required to be appointed by these previous
252 governing boards;

253 (33) Pursuant to article three-a, chapter twenty-nine-a of
254 this code and section six, article one of this chapter,
255 promulgate rules necessary or expedient to fulfill the
256 purposes of this chapter. The commission and the council
257 shall promulgate a uniform joint legislative rule for the
258 purposes of standardizing, as much as possible, the
259 administration of personnel matters among the state
260 institutions of higher education and implementing the
261 provisions of articles seven, eight, nine and nine-a of this
262 chapter;

263 (34) Determine when a joint rule among the governing
264 boards under its jurisdiction is necessary or required by law
265 and, in those instances, in consultation with the governing
266 boards under its jurisdiction, promulgate the joint rule;

267 (35) Promulgate and implement a rule jointly with the
268 council whereby course credit earned at a community and
269 technical college transfers for program credit at any other
270 state institution of higher education and is not limited to
271 fulfilling a general education requirement;

272 (36) By October 1, 2011, promulgate a rule pursuant to
273 section one, article ten of this chapter, establishing tuition
274 and fee policy for all governing boards under the jurisdiction
275 of the commission, including Marshall University and West
276 Virginia University. The rule shall include, but is not limited
277 to, the following:

278 (A) Comparisons with peer institutions;

279 (B) Differences among institutional missions;

280 (C) Strategies for promoting student access;

281 (D) Consideration of charges to out-of-state students; and

282 (E) Such other policies as the commission and council
283 consider appropriate;

284 (37) Implement general disease awareness initiatives to
285 educate parents and students, particularly dormitory
286 residents, about meningococcal meningitis; the potentially
287 life-threatening dangers of contracting the infection;
288 behaviors and activities that can increase risks; measures that
289 can be taken to prevent contact or infection; and potential
290 benefits of vaccination. The commission shall encourage
291 governing boards that provide medical care to students to
292 provide access to the vaccine for those who wish to receive
293 it; and

294 (38) Notwithstanding any other provision of this code to
295 the contrary sell, lease, convey or otherwise dispose of all or
296 part of any real property that it owns, in accordance with
297 article nineteen of this chapter.

298 (b) In addition to the powers and duties listed in
299 subsection (a) of this section, the commission has the
300 following general powers and duties related to its role in
301 developing, articulating and overseeing the implementation
302 of the public policy agenda:

303 (1) Planning and policy leadership, including a distinct
304 and visible role in setting the state's policy agenda and in
305 serving as an agent of change;

306 (2) Policy analysis and research focused on issues
307 affecting the system as a whole or a geographical region
308 thereof;

309 (3) Development and implementation of institutional
310 mission definitions, including use of incentive funds to
311 influence institutional behavior in ways that are consistent
312 with public priorities;

313 (4) Academic program review and approval for governing
314 boards under its jurisdiction. The review and approval
315 includes use of institutional missions as a template to judge
316 the appropriateness of both new and existing programs and
317 the authority to implement needed changes.

318 (A) The commission's authority to review and approve
319 academic programs for either Marshall University or West
320 Virginia University is limited to programs that are proposed
321 to be offered at a new location not presently served by that
322 institution;

323 (B) The commission shall approve or disapprove proposed
324 academic degree programs in those instances where approval
325 is required as soon as practicable, but in any case not later
326 than six months from the date the governing board makes an
327 official request. The commission may not withhold approval
328 unreasonably.

329 (5) Distribution of funds appropriated to the commission,
330 including incentive and performance-based funds;

331 (6) Administration of state and federal student aid
332 programs under the supervision of the vice chancellor for
333 administration, including promulgation of rules necessary to
334 administer those programs;

335 (7) Serving as the agent to receive and disburse public
336 funds when a governmental entity requires designation of a
337 statewide higher education agency for this purpose;

338 (8) Developing, establishing and implementing
339 information, assessment, accountability and personnel
340 systems, including maintaining statewide data systems that
341 facilitate long-term planning and accurate measurement of
342 strategic outcomes and performance indicators;

343 (9) Jointly with the council, promulgating and implementing
344 rules for licensing and oversight for both public and private
345 degree-granting and nondegree-granting institutions that provide
346 post-secondary education courses or programs in the state. The
347 council has authority and responsibility for approval of all post-
348 secondary courses or programs providing community and
349 technical college education as defined in section two, article one
350 of this chapter.

351 (10) Developing, implementing and overseeing statewide
352 and regional projects and initiatives related to providing post-
353 secondary education at the baccalaureate level and above
354 such as those using funds from federal categorical programs
355 or those using incentive and performance-based funds from
356 any source;

357 (11) Quality assurance that intersects with all other duties
358 of the commission particularly in the areas of research, data
359 collection and analysis, personnel administration, planning,
360 policy analysis, program review and approval, budgeting and
361 information and accountability systems; and

362 (12) Developing budgets and allocating resources for
363 governing boards under its jurisdiction:

364 (A) For all governing boards under its jurisdiction, except
365 the governing boards of Marshall University and West
366 Virginia University, the commission shall review institutional
367 operating budgets, review and approve capital budgets, and
368 distribute incentive and performance-based funds;

369 (B) For the governing boards of Marshall University and
370 West Virginia University, the commission shall distribute
371 incentive and performance-based funds and may review and
372 comment upon the institutional operating budgets and capital
373 budgets. The commission's comments, if any, shall be made
374 part of the governing board's minute record.

375 (c) In addition to the powers and duties provided in
376 subsections (a) and (b) of this section and any other powers
377 and duties assigned to it by law, the commission has other
378 powers and duties necessary or expedient to accomplish the
379 purposes of this article.

380 (d) The commission may withdraw specific powers of a
381 governing board under its jurisdiction for a period not to
382 exceed two years, if the commission determines that any of
383 the following conditions exist:

384 (1) The governing board has failed for two consecutive
385 years to develop or implement an institutional compact as
386 required in article one-d of this chapter;

387 (2) The commission has received information,
388 substantiated by independent audit, of significant
389 mismanagement or failure to carry out the powers and duties
390 of the governing board according to state law; or

391 (3) Other circumstances which, in the view of the
392 commission, severely limit the capacity of the governing
393 board to exercise its powers or carry out its duties and
394 responsibilities.

395 The commission may not withdraw specific powers for a
396 period exceeding two years. During the withdrawal period,
397 the commission shall take all steps necessary to reestablish
398 sound, stable and responsible institutional governance.

**§18B-1B-5. Employment of Chancellor for Higher Education;
office; powers and duties generally; employment
of Vice Chancellors and other staff.**

1 (a) The commission, created by section one of this article,
2 shall employ a Chancellor for Higher Education who is the
3 Chief Executive Officer of the Commission and who serves
4 at its will and pleasure.

5 (b) The commission shall set the qualifications for the
6 position of Chancellor and, when a vacancy occurs, shall
7 conduct a thorough nationwide search for qualified
8 candidates. A qualified candidate is one who meets at least
9 the following criteria:

10 (1) Possesses an excellent academic and administrative
11 background;

12 (2) Demonstrates strong communication skills;

13 (3) Has significant experience and an established national
14 reputation as a professional in the field of higher education;

15 (4) Is free of institutional or regional biases; and

16 (5) Holds or retains no other administrative position
17 within a system of higher education while employed as
18 chancellor.

19 (c) The commission shall conduct written performance
20 evaluations of the chancellor annually and may offer the
21 chancellor a contract not to exceed three years. At the end of
22 each contract period, the commission shall review the
23 evaluations and make a determination by vote of its members
24 on continuing employment and compensation level.

25 (d) When filling a vacancy in the position of chancellor,
26 the commission shall enter into an initial employment
27 contract for one year with the candidate selected. At the end
28 of the initial contract period, and each contract period
29 thereafter, the commission shall review the evaluations and
30 make a determination by vote of its members on continuing
31 employment and compensation level for the chancellor.

32 (e) The commission sets the chancellor's salary. The
33 salary may not exceed by more than twenty percent the

34 average annual salary of chief executive officers of state
35 systems of higher education in the states that comprise the
36 membership of the Southern Regional Education Board.

37 (f) The commission may employ a Vice Chancellor for
38 Health Sciences who serves at the will and pleasure of the
39 commission. The Vice Chancellor for Health Sciences shall
40 coordinate the West Virginia University School of Medicine,
41 the Marshall University School of Medicine and the West
42 Virginia School of Osteopathic Medicine and also shall
43 provide assistance to the governing boards on matters related
44 to medical education and health sciences. The Vice
45 Chancellor for Health Sciences shall perform all duties
46 assigned by the chancellor, the commission and state law. In
47 the case of a vacancy in the office of Vice Chancellor of
48 Health Sciences, the duties assigned to this office by law are
49 the responsibility of the chancellor or a designee.

50 (g) The commission shall employ a Vice Chancellor for
51 Administration pursuant to section two, article four of this
52 chapter.

53 (h) The commission shall employ a Vice Chancellor for
54 Human Resources pursuant to section two-a, article four of
55 this chapter. The person serving as senior director of human
56 resources by the commission on January 1, 2011, is Vice
57 Chancellor for Human Resources on the effective date of this
58 section. Additionally, the commission shall employ a
59 qualified generalist in the field of human resources pursuant
60 to section two-a, article four of this chapter. The human
61 resources generalist shall report to the Vice Chancellor for
62 Human Resources.

63 (i) The commission may employ a Vice Chancellor for
64 State Colleges who serves at the will and pleasure of the
65 commission. At a minimum, the Vice Chancellor for State
66 Colleges shall perform the following duties:

67 (1) Provide assistance to the commission, the chancellor
68 and the state colleges on matters related to or of interest and
69 concern to these institutions;

70 (2) Advise, assist and consult regularly with the
71 presidents and governing boards of each state college;

72 (3) Serve as an advocate and spokesperson for the state
73 colleges to represent them and to make their interests, views
74 and issues known to the chancellor, the commission and
75 governmental agencies;

76 (4) Perform all duties assigned by the chancellor, the
77 commission and state law.

78 In addition, the vice chancellor for state colleges shall
79 provide staff assistance to the presidents and governing
80 boards to the extent practicable.

81 (j) On behalf of the commission, the chancellor may enter
82 into agreements with any state agency or political subdivision
83 of the state, any state institution of higher education or any
84 other person or entity to enlist staff assistance to implement
85 the powers and duties assigned by the commission or by state
86 law.

87 (k) The chancellor is responsible for the daily operations
88 of the commission and has the following responsibilities
89 relating to the commission and the governing boards under its
90 jurisdiction:

91 (1) To carry out policy and program directives of the
92 commission;

93 (2) To develop and submit annual reports on the
94 implementation plan to achieve the goals and objectives set
95 forth in section one-a, article one and article one-d of this
96 chapter, and in the compacts;

97 (3) To prepare and submit to the commission for its
98 approval the proposed budget of the commission including
99 the offices of the chancellor and the vice chancellors;

100 (4) To assist the governing boards in developing rules,
101 subject to the provisions of section six, article one of this
102 chapter. Nothing in this chapter requires the rules of the
103 governing boards to be filed pursuant to the rule-making
104 procedures provided in article three-a, chapter twenty-nine-a
105 of this code. The commission and the council, either
106 separately or jointly as appropriate, are responsible for
107 ensuring that any policy which is required to be uniform
108 across the institutions is applied in a uniform manner;

109 (5) To perform all other duties and responsibilities
110 assigned by the commission or by state law.

111 (1) The chancellor shall be reimbursed for all actual and
112 necessary expenses incurred in the performance of all
113 assigned duties and responsibilities.

114 (m) The chancellor, with the commission, advises the
115 Legislature on matters of higher education in West Virginia.
116 The chancellor shall work closely with the Legislative
117 Oversight Commission on Education Accountability and with
118 the elected leadership of the state to ensure that they are fully
119 informed about higher education issues and that the
120 commission fully understands the goals, objectives and
121 priorities for higher education that the Legislature has
122 established by law.

123 (n) The chancellor may design and develop for
124 consideration by the commission new statewide or region-
125 wide initiatives in accordance with the goals set forth in
126 section one-a, article one and article one-d of this chapter,
127 and the public policy agenda articulated by the commission.
128 In those instances where the initiatives to be proposed have

129 a direct and specific impact or connection to community and
130 technical college education as well as to baccalaureate and
131 graduate education, the Chancellor for Higher Education and
132 the Chancellor for Community and Technical College
133 Education shall design and develop the initiatives jointly for
134 consideration by the commission and the council.

135 (o) To further the goals of cooperation and coordination
136 between the commission and the state Board of Education,
137 the chancellor serves as an ex officio, nonvoting member of
138 the state board. The chancellor shall work closely with
139 members of the state Board of Education and with the State
140 Superintendent of Schools to assure that the following goals
141 are met:

142 (1) Development and implementation of a seamless
143 kindergarten-through-college system of education; and

144 (2) Appropriate coordination of missions and programs.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-3. Supervision of governing boards; promulgation of rules.

1 (a) The governing boards are subject to the supervision
2 of the commission or the council, as appropriate, except in
3 those instances where specific statutory exceptions are
4 granted by law to the governing boards of Marshall
5 University and West Virginia University.

6 (b) The governing boards of all state institutions of higher
7 education are subject to the provisions of law that relate to
8 the administration of personnel matters including,
9 specifically, articles seven, eight, nine and nine-a of this
10 chapter and to rules promulgated and adopted in accordance
11 with these provisions.

12 (c) The Chancellor for Higher Education and the
13 Chancellor for Community and Technical College Education,
14 under the supervision of their respective boards, are
15 responsible for the coordination of policies, purposes and
16 rules of the governing boards and shall provide for and
17 facilitate sufficient interaction among the governing boards
18 and between the governing boards and the state Board of
19 Education to meet the goals and objectives provided in the
20 compacts and in section one-a, article one and article one-d
21 of this chapter.

22 (d) The governing boards and the state Board of
23 Education shall provide all information requested by the
24 commission and the council, whether the request is made
25 separately or jointly, in an appropriate format and in a timely
26 manner.

§18B-2A-4. Powers and duties of governing boards generally.

1 Each governing board separately has the following
2 powers and duties:

3 (a) Determine, control, supervise and manage the
4 financial, business and education policies and affairs of the
5 state institution of higher education under its jurisdiction;

6 (b) Develop a master plan for the institution under its
7 jurisdiction.

8 (1) The ultimate responsibility for developing and
9 updating each master plan at the institution resides with the
10 governing board, but the ultimate responsibility for approving
11 the final version of each master plan, including periodic
12 updates, resides with the commission or council, as
13 appropriate.

14 (2) Each master plan shall include, but is not limited to,
15 the following:

16 (A) A detailed demonstration of how the master plan will
17 be used to meet the goals, objectives and priorities of the
18 compact;

19 (B) A well-developed set of goals, objectives and
20 priorities outlining missions, degree offerings, resource
21 requirements, physical plant needs, personnel needs,
22 enrollment levels and other planning determinates and
23 projections necessary in a plan to assure that the needs of the
24 institution's area of responsibility for a quality system of
25 higher education are addressed;

26 (C) Documentation showing how the governing board
27 involved the commission or council, as appropriate,
28 constituency groups, clientele of the institution and the
29 general public in the development of all segments of the
30 master plan.

31 (3) The plan shall be established for periods of not fewer
32 than three nor more than five years and shall be revised
33 periodically as necessary, including adding or deleting
34 bachelor's, master's and doctoral degree programs for all
35 governing boards as approved by the commission or council,
36 respectively, except for the governing boards of Marshall
37 University and West Virginia University only, the
38 commission may review, but may not approve or disapprove,
39 additions or deletions of degree programs.

40 (c) Develop a ten-year campus development plan in
41 accordance with article nineteen of this chapter;

42 (d) Prescribe for the institution, under its jurisdiction, in
43 accordance with its master plan and compact, specific
44 functions and responsibilities to achieve the goals, objectives
45 and priorities established in articles one and one-d of this
46 chapter to meet the higher education needs of its area of
47 responsibility and to avoid unnecessary duplication;

48 (e) Direct the preparation of an appropriation request for
49 the institution under its jurisdiction, which relates directly to
50 missions, goals and projections found in the master plan and
51 the compact;

52 (f) Consider, revise and submit for review and approval
53 to the commission or council, as appropriate, an
54 appropriation request on behalf of the institution under its
55 jurisdiction;

56 (g) Review, at least every five years, all academic
57 programs offered at the institution under its jurisdiction. The
58 review shall address the viability, adequacy and necessity of
59 the programs in relation to established state goals, objectives
60 and priorities, the master plan, the compact and the education
61 and workforce needs of its responsibility district. As a part
62 of the review, each governing board shall require the
63 institution under its jurisdiction to conduct periodic studies of
64 its graduates and their employers to determine placement
65 patterns and the effectiveness of the education experience.
66 Where appropriate, these studies should coincide with the
67 studies required of many academic disciplines by their
68 accrediting bodies;

69 (h) Ensure that the sequence and availability of academic
70 programs and courses offered by the institution under its
71 jurisdiction is such that students have the maximum
72 opportunity to complete programs in the time frame normally
73 associated with program completion. Each governing board
74 is responsible to see that the needs of nontraditional college-
75 age students are appropriately addressed and, to the extent it
76 is possible for the individual governing board to control, to
77 assure core course work completed at the institution is
78 transferable to any other state institution of higher education
79 for credit with the grade earned;

80 (i) Subject to article one-b of this chapter, approve the
81 teacher education programs offered in the institution under its

82 control. In order to permit graduates of teacher education
83 programs to receive a degree from a nationally accredited
84 program and in order to prevent expensive duplication of
85 program accreditation, the commission may select and use
86 one nationally recognized teacher education program
87 accreditation standard as the appropriate standard for
88 program evaluation;

89 (j) Involve faculty, students and classified employees in
90 institution-level planning and decisionmaking when those
91 groups are affected;

92 (k) Subject to federal law and pursuant to articles seven,
93 eight, nine and nine-a of this chapter and to rules adopted by
94 the commission and the council, administer a system for the
95 management of personnel matters, including, but not limited
96 to, discipline for employees at the institution under its
97 jurisdiction;

98 (l) Administer a system for hearing employee grievances
99 and appeals. Notwithstanding any other provision of this
100 code to the contrary, the procedure established in article two,
101 chapter six-c of this code is the exclusive mechanism for
102 hearing prospective employee grievances and appeals;

103 (m) Solicit and use or expend voluntary support,
104 including financial contributions and support services, for the
105 institution under its jurisdiction;

106 (n) Appoint a president for the institution under its
107 jurisdiction subject to section six, article one-b of this
108 chapter;

109 (o) Conduct written performance evaluations of the
110 president pursuant to section six, article one-b of this chapter;

111 (p) Employ all faculty and staff at the institution under its
112 jurisdiction. The employees operate under the supervision of
113 the president, but are employees of the governing board;

114 (q) Submit to the commission or council, as appropriate,
115 any data or reports requested by the commission or council
116 within the time frame set by the commission or council;

117 (r) Enter into contracts or consortium agreements with the
118 public schools, private schools or private industry to provide
119 technical, vocational, college preparatory, remedial and
120 customized training courses at locations either on campuses
121 of the state institutions of higher education or at off-campus
122 locations in the institution's responsibility district. To
123 accomplish this goal, the boards may share resources among
124 the various groups in the community;

125 (s) Provide and transfer funds and property to certain
126 corporations pursuant to section ten, article twelve of this
127 chapter;

128 (t) Delegate, with prescribed standards and limitations,
129 the part of its power and control over the business affairs of
130 the institution to the president in any case where it considers
131 the delegation necessary and prudent in order to enable the
132 institution to function in a proper and expeditious manner and
133 to meet the requirements of its master plan and compact. If
134 a governing board elects to delegate any of its power and
135 control under this subsection, it shall enter the delegation in
136 the minutes of the meeting when the decision was made and
137 shall notify the commission or council, as appropriate. Any
138 delegation of power and control may be rescinded by the
139 appropriate governing board, the commission or council, as
140 appropriate, at any time, in whole or in part, except that the
141 commission may not revoke delegations of authority made by
142 the governing board of Marshall University or West Virginia
143 University;

144 (u) Unless changed by the commission or the council, as
145 appropriate, continue to abide by existing rules setting forth
146 standards for accepting advanced placement credit for the
147 institution under its jurisdiction. Individual departments at a
148 state institution of higher education, with approval of the
149 faculty senate, may require higher scores on the advanced
150 placement test than scores designated by the governing board
151 when the credit is to be used toward meeting a requirement
152 of the core curriculum for a major in that department;

153 (v) Consult, cooperate and coordinate with the State
154 Treasurer and the State Auditor to update as necessary and
155 maintain an efficient and cost-effective system for the
156 financial management and expenditure of appropriated and
157 nonappropriated revenue at the institution under its
158 jurisdiction. The system shall ensure that properly submitted
159 requests for payment are paid on or before the due date but,
160 in any event, within fifteen days of receipt in the State
161 Auditor's office;

162 (w) In consultation with the appropriate chancellor and
163 the Secretary of the Department of Administration, develop,
164 update as necessary and maintain a plan to administer a
165 consistent method of conducting personnel transactions,
166 including, but not limited to, hiring, dismissal, promotions,
167 changes in salary or compensation and transfers at the
168 institution under its jurisdiction. Each personnel transaction
169 shall be accompanied by the appropriate standardized system
170 or forms, as appropriate, which shall be submitted to the
171 respective governing board and the Department of
172 Administration:

173 (1) Not later than July 1, 2012, the Department of
174 Administration shall make available to each governing board
175 the option of using a standardized electronic system for these
176 personnel transactions.

177 (2) The Secretary of the Department of Administration
178 may suspend a governing board's participation in the
179 standardized electronic system if he or she certifies to the
180 Governor that the governing board has failed repeatedly and
181 substantially to comply with the department's policies for
182 administering the electronic system;

183 (x) Notwithstanding any other provision of this code to
184 the contrary, transfer funds from any account specifically
185 appropriated for its use to any corresponding line item in a
186 general revenue account at any agency or institution under its
187 jurisdiction as long as the transferred funds are used for the
188 purposes appropriated;

189 (y) Transfer funds from appropriated special revenue
190 accounts for capital improvements under its jurisdiction to
191 special revenue accounts at agencies or institutions under its
192 jurisdiction as long as the transferred funds are used for the
193 purposes appropriated in accordance with article nineteen of
194 this chapter;

195 (z) Notwithstanding any other provision of this code to
196 the contrary, acquire legal services that are necessary,
197 including representation of the governing board, its
198 institution, employees and officers before any court or
199 administrative body. The counsel may be employed either on
200 a salaried basis or on a reasonable fee basis. In addition, the
201 governing board may, but is not required to, call upon the
202 Attorney General for legal assistance and representation as
203 provided by law; and

204 (aa) Contract and pay for disability insurance for a class
205 or classes of employees at a state institution of higher
206 education under its jurisdiction.

§18B-2A-8. Additional powers and duties of governing boards.

1 (a) The governing board of a state institution of higher
2 education is granted the additional powers and assigned the
3 associated duties pursuant to this section previously granted
4 and assigned to the governing boards of Marshall University
5 and West Virginia University, if the commission or council,
6 as appropriate, approves granting the powers and assigning
7 the duties to that governing board.

8 (b) The powers and duties that may be granted and
9 assigned pursuant to this section are the following:

10 (1) Sections five, six and seven, article three, chapter
11 twelve of this code;

12 (2) Section two, article three of this chapter;

13 (3) Sections five, six and seven, article four of this
14 chapter;

15 (4) Section seven, article five of this chapter; and

16 (5) Section six-a, article ten of this chapter.

17 (c) *Additional powers and duties related to purchasing --*
18 The powers and duties granted and assigned to the governing
19 boards of Marshall University and West Virginia University
20 by section four, article five of this chapter are extended to the
21 governing boards of all other state institutions of higher
22 education under the following conditions:

23 (1) The commission and council shall conduct a study to
24 determine the capacity of each governing board under their
25 respective jurisdictions to implement the additional powers
26 and carry out the additional assigned duties related to
27 purchasing;

28 (2) Based upon the findings of the study, the commission
29 and council shall approve the governing boards under their

30 respective jurisdictions that they determine have the capacity
31 to exercise the powers and carry out the assigned duties
32 pursuant to section four, article five of this chapter; and

33 (3) The commission and council shall report their
34 findings together with a list of the governing boards they
35 each have approved to the Legislative Oversight Commission
36 on Education Accountability by December 1, 2011.

37 (d) The commission and council have the power and the
38 duty to monitor participation and provide technical
39 assistance, as requested or required, to governing boards
40 under their respective jurisdictions and to limit or rescind
41 exercise of the powers, in whole or in part, granted by this
42 section to a governing board if, in the sole determination of
43 the commission or council, as appropriate, that action is
44 warranted.

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR
COMMUNITY AND TECHNICAL
COLLEGE EDUCATION.**

**§18B-2B-3. West Virginia Council for Community and
Technical College Education; supervision of
chancellor; chief executive officer.**

1 (a) There is continued the West Virginia Council for
2 Community and Technical College Education. The council
3 has all the powers and duties assigned by law to the joint
4 commission for vocational--technical--occupational education
5 prior to July 1, 2001, and all other powers and duties
6 assigned by law.

7 (b) The council shall employ a chancellor for community
8 and technical college education. The chancellor serves as
9 chief executive officer of the council at the will and pleasure
10 of the council. The chancellor shall be compensated at a
11 level set by the council not to exceed eighty percent of the

12 average annual salary of chief executive officers of the state
13 systems of community and technical colleges in the states
14 that comprise the membership of the Southern Regional
15 Education Board.

16 (c) The council shall conduct written performance
17 evaluations of the chancellor annually and may offer the
18 chancellor a contract not to exceed three years. At the end of
19 each contract period, the council shall review the evaluations
20 and make a determination by vote of its members on
21 continuing employment and level of compensation.

22 (d) When a vacancy occurs in the position of chancellor,
23 the council shall enter into an initial employment contract for
24 one year with the candidate selected to fill the vacancy. At
25 the end of the initial period, and each contract period
26 thereafter, the council shall review the evaluations and make
27 a determination by vote of its members on continuing
28 employment and compensation level for the chancellor.

29 (e) The individual who was serving as Vice Chancellor
30 for Community and Technical College Education and
31 Workforce Development and who became chancellor
32 effective March 13, 2004, maintains all benefits of
33 employment held, accrued and afforded as the Vice
34 Chancellor for Community and Technical College Education
35 and Workforce Development prior to March 13, 2004. These
36 benefits include, but are not limited to, retirement benefits,
37 continued membership in the same retirement system,
38 insurance coverage and sick and annual leave. For the
39 purposes of leave conversion established in section thirteen,
40 article sixteen, chapter five of this code, the chancellor is not
41 a new employee and the prohibition on conversion does not
42 apply if the chancellor was eligible for leave conversion
43 while serving as vice chancellor.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF GOVERNING BOARDS.

§18B-3-1. Legislative findings, purpose; intent; definition.

1 (a) The Legislature finds that an effective and efficient
2 system of doctoral-level education is vital to providing for
3 the economic well-being of the citizens of West Virginia and
4 for accomplishing established state goals and objectives. As
5 the only research and doctoral-granting public universities in
6 the state, Marshall University and West Virginia University
7 are major assets to the citizens of West Virginia and must be
8 an integral part of any plan to strengthen and expand the
9 economy.

10 (b) The Legislature further finds that these two institutions
11 must compete in both a national and global environment that is
12 rapidly changing, while they continue to provide high quality
13 education that is both affordable and accessible and remain
14 accountable to the people of West Virginia for the most efficient
15 and effective use of scarce resources.

16 (c) The Legislature further finds that Marshall University
17 and West Virginia University, under the direction of their
18 respective governing boards, may manage operational
19 governance of their institutions in an efficient and
20 accountable manner and may best fulfill their public missions
21 when their governing boards are given flexibility and
22 autonomy sufficient to meet state goals, objectives and
23 priorities established in this article, and in section one-a,
24 article one and article one-d of this chapter.

25 (d) Therefore, the purposes of this article include, but are
26 not limited to, the following:

27 (1) Enhancing the competitive position of Marshall
28 University and West Virginia University in the current
29 environment for research and development;

30 (2) Providing the governing boards of these institutions
31 with operational flexibility and autonomy in certain areas,
32 including tools to promote economic development in West
33 Virginia;

34 (3) Encouraging the development of research expertise in
35 areas directly beneficial to the state;

36 (4) Focusing the attention and resources of the governing
37 boards on state goals, objectives and priorities to enhance the
38 competitive position of the state and the economic, social and
39 cultural well-being of its citizens; and

40 (5) Providing additional autonomy and operational
41 flexibility and assigning certain additional responsibilities to
42 governing boards of other state institutions of higher
43 education.

44 (e) The governing boards of Marshall University and
45 West Virginia University each have the power and the
46 obligation to perform functions, tasks and duties as
47 prescribed by law and to exercise their authority and carry
48 out their responsibilities in a manner that is consistent with
49 and not in conflict with the powers and duties assigned by
50 law to the council and the commission.

51 (f) While the governing boards may choose to delegate
52 powers and duties to their respective presidents pursuant to
53 subsection (s), section four, article two-a of this chapter,
54 ultimately, it is they who are accountable to the Legislature,
55 the Governor and the citizens of West Virginia for meeting
56 the established state goals, objectives and priorities set forth
57 in this article, and in section one-a, article one and article
58 one-d of this chapter. Therefore, grants of operational
59 flexibility and autonomy are made directly to the governing
60 boards and are not grants of operational flexibility and
61 autonomy to the president of an institution.

§18B-3-3. Relationship of governing boards to the commission and the council.

1 (a) *Relationship between the commission and the*
2 *governing boards.* --

3 (1) The commission functions as a state-level
4 coordinating board exercising its powers and duties in
5 relation to the governing boards as prescribed by law;

6 (2) The primary responsibility of the commission is to
7 work collaboratively with the governing boards to research,
8 develop and propose policy that will achieve the established
9 goals, objectives, and priorities set forth in this chapter and
10 chapter eighteen-c of this code; and

11 (3) The commission has specific powers and duties which
12 include, but are not limited to, the following:

13 (A) Advocating for public higher education at the state
14 level;

15 (B) Jointly with the council, implementing the
16 classification and compensation system established by
17 articles seven, eight, nine and nine-a of this chapter; and

18 (C) Collecting and analyzing data, researching,
19 developing recommendations, and advising the Legislature
20 and the Governor on broad policy initiatives, use of incentive
21 funding, national and regional trends in higher education and
22 issues of resource allocation involving multiple governing
23 boards.

24 (b) *Relationship between the council and the governing*
25 *boards.* -- (1) The council maintains all powers and duties
26 assigned to it by law or rule relating to community and
27 technical colleges as defined in section two, article one of
28 this chapter;

29 (2) The council functions as a coordinating board for the
30 institutions under its jurisdiction which make up the
31 statewide network of independently-accredited community
32 and technical colleges. In addition to recognizing the
33 authority assigned by law to the council and abiding by rules
34 duly promulgated by the council relating to the community
35 and technical colleges, the governing boards shall exercise
36 their authority and carry out their responsibilities in a manner
37 that is consistent with and complementary to the powers and
38 duties assigned by law or rule to the community and technical
39 colleges or to the council;

40 (c) The governing boards shall work collaboratively with
41 the commission, the council and their staff to provide all
42 information requested by the commission or the council in an
43 appropriate format and in a timely manner.

§18B-3-4. Duty of governing boards to address state priorities.

1 The expertise of faculty and graduate students at state
2 institutions of higher education is important to every citizen
3 of this state. It is the responsibility of the governing boards
4 to channel this expertise into research and analysis that will
5 yield measurable benefits to the citizens of West Virginia.
6 Therefore, in addition to the goals, objectives and priorities
7 established in section one-a, article one and article one-d of
8 this chapter and goals established elsewhere in this code, it is
9 the responsibility of the governing boards to concentrate
10 attention and resources on certain specific state priorities that
11 have a direct, positive impact on the economic, social and
12 cultural well-being of the people of West Virginia.

13 (a) Priorities for Marshall University and West Virginia
14 University in collaboration:

15 (1) Developing Regional Brownfield Assistance Centers
16 pursuant to section seven, article eleven of this chapter;

17 (2) Performing professional development-related research
18 and coordinating the delivery of professional development to
19 educators in the public schools of the state pursuant to article
20 two, chapter eighteen of this code; and

21 (3) Building subject matter expertise in public education
22 finance, including mastery of the theories and concepts used
23 in developing formulas to provide state-level financial
24 support to public education.

25 (b) The Legislature may, but is not required to, make
26 additional appropriations for the benefit of Marshall
27 University and West Virginia University to assist them in
28 fulfilling the purposes set forth in subsection (a) of this
29 section.

30 (c) Additional priorities for governing boards:

31 (d) In addition to the priorities established in subsection
32 (a) of this section, each governing board under the
33 jurisdiction of the commission shall focus resources and
34 attention on improving its graduation rate for full-time
35 undergraduate students as a specific institutional priority.
36 The graduation rate is measured as a percentage of the
37 number of undergraduate students who obtain a degree within
38 six years of the date of enrollment as full-time freshmen.

39 (1) By July 1, 2015, the governing board of each state
40 institution of higher education under the jurisdiction of the
41 commission, including the governing boards of Marshall
42 University and West Virginia University, shall attain a
43 graduation rate for full-time undergraduate students that
44 equals or exceeds the graduation rate of its peers established
45 pursuant to section three, article one-a of this chapter.

46 (2) The commission shall monitor and report annually by
47 December 1, to the Legislative Oversight Commission on

48 Education Accountability on the progress of the governing
49 boards toward meeting the goals set forth in this subsection.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.

1 (a) The council and commission each shall employ a
2 chancellor to assist in the performance of their respective
3 duties and responsibilities subject to the following
4 conditions:

5 (1) Each chancellor serves at the will and pleasure of the
6 hiring body.

7 (2) Neither chancellor may hold or retain any other
8 administrative position within the system of higher education
9 while employed as chancellor.

10 (3) Each chancellor shall carry out the directives of the
11 body by whom employed and shall collaborate with that body
12 in developing policy options.

13 (4) The commission is responsible to the council and the
14 Chancellor for Community and Technical College Education
15 for providing services in areas essential to exercising the
16 powers and duties assigned to the council by law. The
17 commission may not charge the council any fee for the
18 provision of these essential services. The service areas
19 include, but are not limited to, legal services, research,
20 technology, computing, finance and facilities, academic
21 affairs, telecommunications, human resources, student
22 services and any other general areas the council considers to
23 be essential to the exercise of its legal authority. The services
24 are provided under the general supervision of the Vice
25 Chancellor for Administration.

26 (5) For the purpose of developing or evaluating policy
27 options, the chancellors may request the assistance of the
28 presidents and staff employed by the governing boards under
29 their respective jurisdictions.

30 (b) In addition to the staff positions designated in
31 subdivision (4), subsection (a) of this section, and section
32 five, article one-b of this chapter, the Vice Chancellor for
33 Administration, employed pursuant to section two of this
34 article, serves the offices of the chancellors to discharge
35 jointly the duties and responsibilities of the council and
36 commission.

37 (c) Suitable offices for the Vice Chancellor of
38 Administration, the Vice Chancellor for Human Resources
39 and other staff shall be provided in Kanawha County.

**§18B-4-2a. Employment of vice chancellor for human
resources; powers and duties generally; staff;
office.**

1 (a) By and with the advice and consent of the council for
2 community and technical college education, the commission
3 shall employ a Vice Chancellor for Human Resources who
4 may not be dismissed without the consent of the council. The
5 person employed as senior director of human resources by
6 the commission on January 1, 2011, becomes the Vice
7 Chancellor for Human Resources on the effective date of this
8 section. Thereafter, any vacancy occurring in this position
9 shall be filled in accordance with this section.

10 (b) The successful candidate for the position of vice
11 chancellor provides vision, leadership and direction to ensure
12 the human resources system for employees of the
13 commission, council and governing boards is effective,
14 efficient and aligned with industry best practices. The
15 successful candidate possesses the following minimum
16 qualifications:

17 (1) A master's degree in human resources or a related
18 field; and

19 (2) Thorough knowledge of and experience administering
20 employment laws and regulations, recruiting and selection
21 techniques, employee relations techniques and
22 methodologies, legal reporting and compliance requirements.

23 (c) The Vice Chancellor, in consultation with the
24 chancellors, performs functions, tasks and responsibilities
25 necessary to carry out the policy directives of the council and
26 commission and any other duties prescribed by law. The
27 Vice Chancellor oversees and monitors all issues related to
28 the personnel system for higher education employees and
29 provides technical support to organizations as directed or
30 requested on all issues related to the design, development,
31 implementation and administration of the personnel system
32 established by this chapter and by duly promulgated rules.

33 (d) The Vice Chancellor supervises employees at the
34 commission offices involved in human resources functions,
35 including the professional, administrative, clerical and other
36 employees necessary to carry out assigned powers and duties.
37 In consultation with the Vice Chancellor for Administration
38 and the chancellors, the Vice Chancellor shall delineate staff
39 responsibilities as considered desirable and appropriate.

40 (e) The Vice Chancellor provides support to the
41 chancellors and organizations on a highly diverse range of
42 issues including assisting them to develop a culture of
43 constant improvement in a rapidly changing, complex
44 market. Duties of the position include, but are not limited to,
45 the following:

46 (1) Developing and implementing business-related
47 initiatives involving organizational design, labor cost
48 management, executive recruitment and compensation,

49 leadership and management development, human resources
50 data and technology, and compensation and benefits
51 programs;

52 (2) Chairing the Job Classification Committee and the
53 Compensation Planning and Review Committee established
54 by sections four, and five, article nine-a of this chapter.

55 (3) Assuming responsibility for coordinating
56 compensation and benefits programs for all employees,
57 including designing these programs, and for supporting each
58 higher education organization in implementing the programs;

59 (4) Maintaining consistent human resources information
60 systems and selecting and supervising benefits consultants,
61 brokers, trustees and necessary legal assistants;

62 (5) Maintaining the classification system by providing for
63 regular review of jobs to determine whether the current job
64 description accurately reflects the duties and responsibilities
65 and whether the job is properly classified or needs to be
66 modified or deleted. Every job shall be reviewed at least
67 once within each five-year period;

68 (6) Ensuring that market comparison studies are
69 conducted for each class of employees and providing a report
70 annually to each organization on the status of relative market
71 equity among the employee classifications.

72 (7) Carrying out the following duties related to training
73 and development:

74 (A) Analyzing and determining training needs of
75 organization employees and formulating and developing
76 plans, procedures and programs to meet specific training
77 needs and problems. Successful completion of these tasks
78 requires the vice chancellor to work closely with and

79 communicate regularly with the training and development
80 coordinators employed by each organization;

81 (B) Developing, constructing, maintaining and revising
82 training manuals and training aids or supervising
83 development of these materials by outside suppliers;

84 (C) Planning, conducting, and coordinating management
85 inventories, appraisals, placement, counseling and training;

86 (D) Coordinating participation by all employees in
87 training programs developed internally or provided by
88 outside contractors; and

89 (E) Administering and analyzing an annual training and
90 development needs survey. The survey may coincide with
91 the completion of the annual performance review process.

92 (8) Conducting performance reviews of personnel who
93 administer human resources functions at each organization in
94 relation to best practices pursuant to articles seven, eight,
95 nine and nine-a of this chapter and rules of the commission
96 and council. Human resources personnel at each organization
97 shall be evaluated at least once within each three-year period.
98 The vice chancellor shall analyze the results of these
99 evaluations and target training and professional development
100 to identified areas of deficiency.

101 (f) To assist in performing the duties of vice chancellor, the
102 commission, with the consent of the council, shall employ a
103 generalist/manager who is well qualified in the field of human
104 resources. The position reports to the vice chancellor for Human
105 resources and shall be filled on a permanent basis by September
106 1, 2011. The successful candidate is responsible for a wide range
107 of human resources management, reporting and development
108 activities and works collaboratively with governing boards and
109 their employees at all levels.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-9. Higher education fiscal responsibility.

1 (a) The governing boards shall ensure the fiscal integrity
2 of their operations using best business and management
3 practices.

4 (1) The practices include at least the following:

5 (A) Complying with Generally Accepted Accounting
6 Principles of the Governmental Accounting Standards Board
7 (GAAP); and the Generally Accepted Government Auditing
8 Standards of the Government Accountability Office
9 (GAGAS);

10 (B) Operating without material weakness in internal
11 controls as defined by GAAP, GAGAS and, where
12 applicable, the Office of Management and Budget (OMB)
13 Circular A-133;

14 (C) Maintaining annual audited financial statements with
15 an unqualified opinion;

16 (D) Preparing annual audited financial statements as
17 coordinated and directed by the commission and council,
18 respectively, and as the commission requires to complete the
19 higher education fund audit;

20 (E) Maintaining quarterly financial statements certified
21 by the chief financial officer of the institution; and

22 (F) Implementing best practices from Sarbanes-Oxley, or
23 adopting the applicable tenets of Sarbanes-Oxley as best
24 practices.

25 (2) Each governing board and any affiliated research
26 corporation shall comply with the OMB Circular A-133
27 annual grant award audit requirements and are exempt from
28 section fourteen, article four, chapter twelve of this code.

29 (3) Within thirty days of the completion of the financial
30 audit report, the governing boards shall furnish to the
31 commission or council, respectively, copies of the annual
32 audited financial statements.

33 (b) The commission and council, each, shall ensure the
34 fiscal integrity of any electronic process conducted at its
35 offices and by the governing boards under its respective
36 jurisdiction by applying best business and management
37 practices.

38 (c) To the maximum extent practicable, each higher
39 education organization shall provide for its employees to
40 receive their wages via electronic transfer or direct deposit.

41 (d) Notwithstanding any other provision of this code to
42 the contrary, a purchasing card may be used by the council,
43 the commission or a governing board of a state institution of
44 higher education to make any payment authorized by the
45 Auditor, including regular routine payments and travel and
46 emergency payments. Payments are set at an amount to be
47 determined by the Auditor.

48 (1) Subject to approval of the auditor, an emergency
49 payment and a routine, regularly scheduled payment,
50 including, but not limited to, utility payments, contracts and
51 real property rental fees, may exceed this limit by an amount
52 to be determined by the auditor.

53 (2) The council, commission and a governing board of a
54 state institution of higher education may use a purchasing
55 card for travel expenses directly related to the job duties of

56 the traveling employee. Where approved by the auditor, the
57 expenses may exceed \$5000 by an amount to be determined
58 by the auditor. Traveling expenses may include registration
59 fees and airline and other transportation reservations, if
60 approved by the president of the institution. Traveling
61 expenses may include purchases of fuel and food.

62 (3) The commission, council, and governing boards each
63 shall maintain one purchasing card for use only in a situation
64 declared an emergency by the appropriate chancellor or the
65 institution's president. Emergencies may include, but are not
66 limited to, partial or total destruction of a facility; loss of a
67 critical component of utility infrastructure; heating,
68 ventilation or air condition failure in an essential academic
69 building; loss of campus road, parking lot or campus
70 entrance; or a local, regional, or national emergency situation
71 that has a direct impact on the campus.

72 (e) Notwithstanding section ten-f, article three, chapter
73 twelve of this code, or any other provision of this code or law
74 to the contrary, the auditor shall accept any receiving report
75 submitted in a format utilizing electronic media. The auditor
76 shall conduct any audit or investigation of the council,
77 commission or governing board at its own expense and at no
78 cost to the council, commission or governing board.

79 (f) The council and the commission each shall maintain
80 a rule in accordance with article three-a, chapter twenty-nine-
81 a of this code. The rule shall provide for governing boards
82 individually or cooperatively to maximize their use of any of
83 the following purchasing practices that are determined to
84 provide a financial advantage:

85 (1) Bulk purchasing;

86 (2) Reverse bidding;

87 (3) Electronic marketplaces; and

88 (4) Electronic remitting.

89 (g) Each governing board may establish a consortium
90 with at least one other governing board, in the most cost-
91 efficient manner feasible, to consolidate the following
92 operations and student services:

93 (1) Payroll operations;

94 (2) Human resources operations;

95 (3) Warehousing operations;

96 (4) Financial transactions;

97 (5) Student financial aid application, processing and
98 disbursement;

99 (6) Standard and bulk purchasing; and

100 (7) Any other operation or service appropriate for
101 consolidation as determined by the council or commission.

102 (h) A governing board may charge a fee to the governing
103 board of each institution for which it provides a service or
104 performs an operation. The fee rate shall be in the best
105 interest of both the institution being served and the governing
106 board providing the service.

107 (i) A governing board may provide the services
108 authorized by this section for the benefit of any governmental
109 body or public or private institution.

110 (j) Each governing board shall strive to minimize its
111 number of low-enrollment sections of introductory courses.

112 To the maximum extent practicable, governing boards shall
113 use distance learning to consolidate the course sections. The
114 council and commission shall report the progress of
115 reductions as requested by the Legislative Oversight
116 Commission on Education Accountability.

117 (k) A governing board shall use its natural resources and
118 alternative fuel resources to the maximum extent feasible.
119 The governing board:

120 (1) May supply the resources for its own use and for use
121 by the governing board of any other institution;

122 (2) May supply the resources to the general public at fair
123 market value;

124 (3) Shall maximize all federal or grant funds available for
125 research regarding alternative energy sources; and

126 (4) May develop research parks to further the purpose of
127 this section and to expand the economic development
128 opportunities in the state.

129 (l) Any cost-savings realized or fee procured or retained
130 by a governing board pursuant to this section is retained by
131 the governing board.

132 (m) Each governing board is authorized, but not required,
133 to implement subsections (f), (g) and (h) of this section.

134 If a governing board elects to implement subsection (g)
135 of this section, the following conditions apply:

136 (1) The governing board makes the determination
137 regarding any additional operation or service which is
138 appropriate for consolidation without input from the council
139 or commission;

140 (2) The governing board sets the fee charged to the
141 governing board of the institution for which it provides a
142 service or performs an operation. The fee rate shall be in the
143 best interest of both the institution being served and the
144 governing board providing the service and is not subject to
145 approval by the council or commission; and

146 (3) The governing board may not implement this
147 subdivision in a manner which supercedes the requirements
148 established in section twelve, article three-c of this chapter.

149 (n) The governing boards of Marshall University and
150 West Virginia University, respectively, each shall promulgate
151 a rule on purchasing procedures in accordance with section
152 six, article one of this chapter.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Legislative intent and purpose.

1 (a) The intent of the Legislature in enacting this article
2 and articles eight, nine and nine-a of this chapter is to
3 establish a state-wide, integrated human resources structure
4 capable of, but not limited to, meeting the following
5 objectives:

6 (1) Providing benefits to the citizens of the State of West
7 Virginia by supporting the public policy agenda as articulated
8 by state policymakers;

9 (2) Assuring fiscal responsibility by making the best use
10 of scarce resources;

11 (3) Promoting fairness, accountability, credibility,
12 transparency and a systematic approach to progress (FACTS)
13 in personnel decision-making;

14 (4) Reducing, or, wherever possible, eliminating arbitrary
15 and capricious decisions affecting employees of higher
16 education organizations as defined in section two, article
17 nine-a of this chapter;

18 (5) Creating a stable, self-regulating human resources
19 system capable of evolving to meet changing needs;

20 (6) Providing for institutional flexibility with meaningful
21 accountability;

22 (7) Adhering to federal and state laws;

23 (8) Adhering to duly promulgated and adopted rules; and

24 (9) Implementing best practices throughout the state
25 higher education system.

26 (b) To accomplish these goals, the Legislature encourages
27 organizations to pursue a human resources strategy which
28 provides monetary and nonmonetary returns to employees in
29 exchange for their time, talents and efforts to meet articulated
30 goals, objectives and priorities of the state, the commission
31 and council, and the organization. The system should
32 maximize the recruitment, motivation and retention of highly
33 qualified employees, ensure satisfaction and engagement of
34 employees with their jobs, ensure job performance and
35 achieve desired results.

§18B-7-2. Definitions.

1 For the purposes of this article and articles eight, nine and
2 nine-a of this chapter, the following words have the meanings
3 ascribed to them unless the context clearly indicates a
4 different meaning:

5 (a) “Benefits” means programs that an employer uses to
6 supplement the cash compensation of employees and

7 includes health and welfare plans, retirement plans, pay for
8 time not worked and other employee perquisites.

9 (b) “Compensation” means cash provided by an employer
10 to an employee for services rendered.

11 (c) “Compensatory time” and “compensatory time off”
12 mean hours during which the employee is not working, which
13 are not counted as hours worked during the applicable work
14 week or other work period for purposes of overtime
15 compensation and for which the employee is compensated at
16 the employee’s regular rate of pay.

17 (d) “Employee classification” or “employee class” means
18 those employees designated as classified employees;
19 nonclassified employees, including presidents, chief
20 executives and top level administrators and faculty as these
21 terms are defined in this article and articles eight, nine and
22 nine-a of this chapter.

23 (e) “Health and welfare benefit plan” means an
24 arrangement which provides any of the following: Medical,
25 dental, visual, psychiatric or long-term health care, life
26 insurance, accidental death or dismemberment benefits,
27 disability benefits or comparable benefits.

28 (f) “Relative market equity” means the relative market
29 status of each employee classification at an organization falls
30 within five percent of all other employee classifications
31 within the organization for the preceding three-year period.

32 (g) “Relative market status” means the calculated
33 relationship between the average salary of each employee
34 classification and its peer group.

§18B-7-3. Seniority for full-time classified personnel; seniority to be observed in reducing workforce; preferred recall list; renewal of listing; notice of vacancies.

1 (a) Definitions for terms used in this section have the
2 meanings ascribed to them in section two, article one of this
3 chapter and section two, article nine of this chapter, except
4 that, unless clearly noted otherwise, this section applies only
5 to an employee:

6 (1) Who is classified and whose employment, if
7 continued, accumulates to a minimum total of one thousand
8 forty hours during a calendar year and extends over at least
9 nine months of a calendar year; or

10 (2) Who is transferred involuntarily to a position in
11 nonclassified status for which he or she did not apply. Any
12 classified employee involuntarily transferred to a position in
13 nonclassified status may exercise the rights set out in this
14 section only for positions equivalent to or lower than the last
15 job class the employee held.

16 (b) All decisions by an organization or its agents
17 concerning reductions in workforce of full-time classified
18 employees, whether by temporary furlough or permanent
19 termination, shall be made in accordance with this section.

20 (1) For layoffs by classification for reason of lack of
21 funds or work, or abolition of position or material changes in
22 duties or organization and for recall of employees laid off,
23 consideration shall be given to an employee's seniority as
24 measured by permanent employment in the service of the
25 state system of higher education.

26 (2) If the organization desires to lay off a more senior
27 employee, it shall demonstrate that the senior employee
28 cannot perform any other job duties held by less senior
29 employees of that organization in the same job class or any
30 other equivalent or lower job class for which the senior

31 employee is qualified. If an employee refuses to accept a
32 position in a lower job class, the employee retains all rights
33 of recall provided in this section.

34 (3) If two or more employees accumulate identical
35 seniority, the priority is determined by a random selection
36 system established by the employees and approved by the
37 organization.

38 (c) Each employee laid off during a furlough or reduction
39 in workforce is placed upon a preferred recall list and is
40 recalled to employment by the organization on the basis of
41 seniority.

42 (1) An employee's listing with an organization remains
43 active for a period of one calendar year from the date of
44 termination or furlough or from the date of the most recent
45 renewal. If an employee fails to renew the listing with the
46 organization, the employee's name may be removed from the
47 list.

48 (2) An employee placed upon the preferred recall list
49 shall be recalled to any position opening by the organization
50 within the classifications in which the employee had
51 previously been employed or to any lateral position for which
52 the employee is qualified.

53 (3) An employee on the preferred recall list does not
54 forfeit the right to recall by the organization if compelling
55 reasons require the employee to refuse an offer of
56 reemployment by the organization.

57 (d) The organization shall notify all employees
58 maintaining active listings on the preferred recall list of all
59 position openings that periodically exist.

60 (1) The notice shall be sent by certified mail to the last
61 known address of the employee. It is the duty of each
62 employee listed to notify the organization of any change in
63 address and to keep the listing with the organization current.

64 (2) A position opening may not be filled by the
65 organization, whether temporary or permanent, until all
66 employees on the preferred recall list have been properly
67 notified of existing vacancies and have been given an
68 opportunity to accept reemployment.

69 (e) A nonexempt classified employee is one to whom the
70 provisions of the federal Fair Labor Standards Act, as
71 amended, apply. A nonexempt classified employee, who
72 applies and meets the minimum qualifications for a
73 nonexempt job opening at the organization where currently
74 employed, whether the job is a lateral transfer or a promotion,
75 shall be transferred or promoted before a new person is hired.

76 (1) This subsection does not apply if the hiring is affected
77 by mandates in affirmative action plans or the requirements
78 of Public Law 101-336, the Americans with Disabilities Act.

79 (2) This subsection applies to any nonexempt classified
80 employee, including one who has not accumulated a
81 minimum total of one thousand forty hours during the
82 calendar year and one whose contract does not extend over at
83 least nine months of a calendar year.

84 (3) If more than one qualified, nonexempt classified
85 employee applies, the best-qualified nonexempt classified
86 employee is awarded the position. In instances where the
87 classified employees are equally qualified, the nonexempt
88 classified employee with the greatest amount of continuous
89 seniority at that organization is awarded the position.

90 (f) In addition to any other information required,
91 applications for employment by personnel governed by this
92 section shall include each applicant's social security number.

93 (g) Regardless of the level of seniority for an employee,
94 for the purposes of this section in the case of a reduction in
95 force:

96 (1) An employee at an organization under the jurisdiction
97 of the council may not displace an employee of an
98 organization under the jurisdiction of the commission.

99 (2) An employee at an organization under the jurisdiction
100 of the commission may not displace an employee of an
101 organization under the jurisdiction of the council.

102 (3) An employee performing a dual service for a formerly
103 administratively linked community and technical college and
104 a former sponsoring institution under the jurisdiction of the
105 commission is an employee of the institution under the
106 jurisdiction of the commission if that institution receives a
107 fee from the community and technical college for the service
108 performed by the employee.

§18B-7-4. Supplemental health and welfare benefit plans.

1 (a) An organization may contract for supplemental health
2 and welfare benefit plans for any or all of its employees in
3 addition to the benefits the employees otherwise receive.

4 (b) An organization may make additional periodic
5 deductions from the salary payments due employees in the
6 amount they are required to contribute for any supplemental
7 health and welfare plan.

§18B-7-5. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

1 (a) Any reference in this code to the “additional
2 retirement plan” relating to state higher education employees,
3 means the “higher education retirement plan” provided in this
4 section. Any state higher education employee participating
5 in a retirement plan upon the effective date of this section

6 continues to participate in that plan and may not elect to
7 participate in any other state retirement plan. Any retirement
8 plan continues to be governed by the provisions of law
9 applicable on the effective date of this section.

10 (b) The commission, on behalf of the council, governing
11 boards and itself, shall contract for a retirement plan for their
12 employees, to be known as the “Higher Education Retirement
13 Plan”. The commission, council and governing boards shall
14 make periodic deductions from the salary payments due
15 employees in the amount they are required to contribute to
16 the Higher Education Retirement Plan, which deductions
17 shall be six percent.

18 (c) The commission, council and governing boards may
19 contract for supplemental retirement plans for any or all of
20 their employees to supplement the benefits employees
21 otherwise receive. The commission, council and governing
22 boards may make additional periodic deductions from the
23 salary payments due the employees in the amount they are
24 required to contribute for the supplemental retirement plan.

25 (d) An organization, by way of additional compensation
26 to their employees, shall pay an amount, which, at a
27 minimum, equals the contributions of the employees into the
28 higher education retirement plan from funds appropriated to
29 the commission, council or governing board for personal
30 services.

31 (e) As part of an overall compensation plan, the
32 commission, council or a governing board, each at its sole
33 discretion, may increase its contributions to any employee
34 retirement plan to an amount that exceeds the contributions
35 of employees.

36 (f) Each participating employee has a full and immediate
37 vested interest in the retirement and death benefits accrued

38 from all the moneys paid into the Higher Education
39 Retirement Plan or a supplemental retirement plan for his or
40 her benefit. Upon proper requisition of a governing board,
41 the commission or council, the Auditor periodically shall
42 issue a warrant, payable as specified in the requisition, for the
43 total contributions so withheld from the salaries of all
44 participating employees and for the matching funds of the
45 commission, council or governing board.

46 (g) Any person whose employment commences on or
47 after July 1, 1991, and who is eligible to participate in the
48 Higher Education Retirement Plan, shall participate in that
49 plan and is not eligible to participate in any other state
50 retirement system: *Provided*, That the foregoing provision
51 does not apply to a person designated as a 21st Century
52 Learner Fellow pursuant to section eleven, article three,
53 chapter eighteen-a of this code. The additional retirement
54 plan contracted for by the governing boards prior to July 1,
55 1991, remains in effect unless changed by the commission.
56 Nothing in this section considers employees of the council or
57 governing boards as employees of the commission, nor is the
58 commission responsible or liable for retirement benefits
59 contracted by, or on behalf of, the council or governing
60 boards.

§18B-7-6. Continuing education and professional development.

1 (a) Each higher education organization shall establish and
2 operate an employee continuing education and development
3 program under a joint rule or rules promulgated by the
4 commission and council in accordance with article three-a,
5 chapter twenty-nine-a of this code. Funds allocated or made
6 available for employee continuing education and
7 development may be used to compensate and pay expenses
8 for faculty or classified employees pursuing additional
9 academic study or training to equip themselves better for
10 their duties.

11 The rules shall encourage continuing education and staff
12 development and shall require that employees be selected on
13 a nonpartisan basis using fair and meaningful criteria which
14 afford all employees opportunities to enhance their skills.
15 These rules also may include reasonable provisions for the
16 continuation or return of any faculty or classified employee
17 receiving the benefits of the education or training, or for
18 reimbursement by the state for expenditures incurred on
19 behalf of the faculty member or classified employee.

20 (b) Subject to legislative appropriation therefor, the
21 commission and council shall provide additional, regular,
22 training and professional development for employees
23 engaged in human resources-related activities at all
24 organizations. The training and professional development:

25 (1) Shall be mandatory with appropriate consideration
26 given to limiting travel demands on employees; and

27 (2) Shall be in addition to and may not supplant the
28 training and professional development regularly provided to
29 any class of employees by each organization prior to the
30 effective date of this section.

§18B-7-7. Employment practices.

1 (a) Each governing board, with the advice and assistance
2 of the staff council, shall promulgate and adopt a rule
3 regarding the role of part-time classified employees. The rule
4 shall discourage the hiring of part-time employees solely to
5 avoid the payment of benefits or in lieu of full-time
6 employees and shall provide all qualified classified
7 employees who hold nine-month or ten-month contracts with
8 the opportunity to accept part-time or full-time summer
9 employment before new persons are hired for the part-time
10 or full-time employment.

11 (b) Each governing board, with the advice and assistance
12 of the staff councils and other groups representing classified
13 employees, shall promulgate and adopt a rule in accordance
14 with section six, article one of this chapter that discourages
15 temporary, nonemergency, institutionally-imposed changes
16 in an employee's work schedule; that maintains reasonable
17 continuity in working schedules and conditions for
18 employees; and that requires institutions to consider feasible
19 and innovative ways to use the institution's classified
20 employees most efficiently. These innovations may include,
21 but are not limited to, flexibility in employee scheduling, job-
22 sharing and four-day work weeks.

§18B-7-8. Reporting.

1 (a) *Implementation reports.* --

2 For the fiscal years commencing on July 1, 2011, and
3 July 1, 2012, the commission and council jointly shall report
4 to the Legislative Oversight Commission on Education
5 Accountability once during each six-month period on their
6 progress in designing, developing, implementing and
7 administering the personnel classification and compensation
8 system established by this article and articles eight, nine and
9 nine-a of this chapter. The initial report is due December 1,
10 2011, and shall include, but is not limited to, the following
11 information:

12 (1) A summary of findings generated by the human
13 resources review conducted pursuant to section nine of this
14 article;

15 (2) Documentation of professional staffing changes made
16 in compliance with section two-a, article four of this chapter;

17 (3) A systematic plan, including a time line, for
18 designing, developing, and implementing the classification

19 and compensation system contained in this article and articles
20 eight, nine and nine-a of this chapter;

21 (4) An explanation of the research design and time line
22 for completing studies identified in section sixteen of this
23 article;

24 (5) An assessment of progress made by the governing
25 boards toward achieving full funding of the temporary
26 classified employees' salary schedule pursuant to section
27 three, article nine of this chapter;

28 (6) Detailed data disaggregated by organization and
29 employee category or classification, comparing funding for
30 salaries of faculty, classified employees and nonclassified
31 employees as a percentage of the average funding for each of
32 these classes or categories of employees among the
33 organization's peers, in regional or national markets, as
34 appropriate, and among similar organizations within the state
35 systems of public higher education; and

36 (7) Other data requested by the Legislature or considered
37 appropriate by the commission or council.

38 (b) *Annual personnel reports.* --

39 (1) No later than December 1, 2013, and annually
40 thereafter, the commission and council shall report to the
41 Legislative Oversight Commission on Education
42 Accountability addressing the following issues:

43 (A) Progress made by organizations toward achieving full
44 funding of the temporary classified employees' salary schedule
45 pursuant to section three, article nine of this chapter; and

46 (B) Detailed data disaggregated by organization and
47 employee category or classification, comparing funding for

48 salaries of faculty, classified employees and nonclassified
49 employees as a percentage of the average funding for each of
50 these classes or categories of employees among the
51 organization's peers, in the state, region or national markets,
52 as appropriate, and among similar organizations within the
53 state systems of public higher education.

54 (2) The commission and council shall prepare a human
55 resources report card summarizing the performance of
56 organizations on key human resources measures. The report
57 card shall be presented to the Legislative Oversight
58 Commission on Education Accountability no later than
59 December 1, 2012, and annually thereafter, and shall be made
60 available to the general public. At a minimum, the human
61 resources report card shall contain the following data:

62 (A) Human resources department metrics by organization:

63 (i) Number of human resources staff;

64 (ii) Ratio of human resources staff to total number of full-
65 time equivalent employees;

66 (iii) Percentage of human resources staff functioning in
67 supervisory roles and percentage in administrative roles;

68 (iv) Number of positions reporting to the head of human
69 resources;

70 (v) Areas of human resources functions outsourced to
71 external entities;

72 (vi) Total expenses per full-time equivalent employee;

73 (vii) Tuition revenue per full-time equivalent employee.

74 (B) Human resources expense data:

- 75 (i) Ratio of human resources expenses to operating
76 expenses;
- 77 (ii) Ratio of human resources expenses to number of full-
78 time equivalent employees; and
- 79 (iii) Total human resources expense per organization
80 employee.
- 81 (C) Compensation data:
- 82 (i) Average amount of annual salary increase per full-
83 time equivalent organization employee;
- 84 (ii) Total amount of organization employee salaries as a
85 percent of operating expenses;
- 86 (iii) Total amount of organization employee benefit costs
87 as a percent of cash compensation.
- 88 (D) System metrics:
- 89 (i) Comparisons of faculty salaries at each organization
90 to market averages;
- 91 (ii) Comparisons of classified and nonclassified
92 employee salaries at each organization to current market
93 averages;
- 94 (E) An account of the total amount, type of training or
95 professional development provided, the number of employees
96 who participated and the overall cost of the training and
97 professional development provided to employees pursuant to
98 section six of this article; and
- 99 (F) Other measures the commission or council considers
100 appropriate to assist policymakers in evaluating the degree of

101 success in implementing best human resources practices by
102 higher education organizations.

103 (c) *Job classification system report.* --

104 By July 1, 2014, and at least once within each five-year
105 period thereafter, the commission and council jointly shall
106 review the effectiveness of the system for classifying jobs
107 and submit an in-depth report to the Legislative Oversight
108 Commission on Education Accountability. The report shall
109 include, but is not limited to, findings, recommendations and
110 supporting documentation regarding the following job
111 classification issues:

112 (A) The effectiveness of the point factor methodology
113 and a determination of whether it should be maintained; and

114 (B) The status of the job evaluation plan, including the
115 factors used to classify jobs or their relative values, and a
116 determination of whether the plan should be adjusted.

117 (d) It is the responsibility of the head of human resources
118 for each organization to prepare and submit to the president
119 or chief executive officer all human resources data requested
120 by the commission and council. The president or executive
121 officer of each organization shall submit the requested data
122 at times established by the commission and council.

123 (e) In meeting reporting requirements established by this
124 article and articles eight, nine and nine-a of this chapter:

125 (1) The commission and council shall use the most recent
126 data available and, as appropriate, shall benchmark it against
127 national and regional markets or peer data; and

128 (2) With the exception of the semiannual implementation
129 reports, the annual human resources report card and any other

130 report designated as due no later than a date certain, the
131 commission and council may combine two or more personnel
132 reports if the dates on which they are due to the Legislature
133 fall within a sixty-day period.

§18B-7-9. Human resources reviews.

1 (a) The commission and council jointly shall conduct an
2 initial human resources review of each organization to be
3 carried out, subject to legislative appropriation, by an
4 external vendor possessing experience and expertise in
5 conducting these reviews. The initial review shall be
6 completed by October 1, 2011, and shall be designed to
7 compare current human resources practices at each
8 organization to best practices, to identify areas of strength or
9 deficiency, to identify functions that should be the
10 responsibility of the human resources department, but are
11 incorrectly assigned or carried out by other offices within
12 each organization, to assist in targeting employee training
13 and development, to determine the degree to which
14 organizations are adhering to state and federal laws related to
15 human resources administration and to provide data
16 necessary to guide policymakers in developing personnel
17 rules and implementing the classification and compensation
18 system.

19 (b) Following completion of the initial human resources
20 review, the commission and council jointly shall conduct a
21 systematic human resources review of each organization at
22 least once within each five-year period.

23 (1) The review shall focus on correcting areas of
24 deficiency identified by previous reviews, on compliance
25 with statutory mandates contained in this article and articles
26 eight, nine and nine-a of this chapter and on adherence to
27 personnel rules of the commission and council.

28 (2) In the absence of special circumstances, the
29 commission and council shall provide organizations with
30 reasonable notice prior to conducting a human resources
31 review and shall identify the subjects to be examined in the
32 review.

§18B-7-10. Compensatory time off in lieu of overtime; written agreement; other conditions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, in lieu of overtime compensation, employees of
3 higher education organizations may receive compensatory
4 time off at a rate not less than one and one-half hours for
5 each hour of employment. Employees may receive
6 compensatory time only under the following conditions:

7 (1) The time is awarded pursuant to a written agreement
8 between the employer and the employee arrived at before the
9 work is performed. A written agreement may be modified at
10 the request of the employer or employee, but under no
11 circumstances may changes in the agreement deny an
12 employee compensatory time already acquired;

13 (2) The time is recorded in the employer's record of
14 hours worked; and

15 (3) The employee has not accrued compensatory time in
16 excess of the prescribed limits.

17 (b) An employee may accrue up to four hundred eighty
18 hours of compensatory time if the employee's work is a
19 public safety activity, an emergency response activity or a
20 seasonal activity. An employee engaged in other work may
21 accrue up to two hundred forty hours of compensatory time.
22 An employee who has accrued four hundred eighty or two
23 hundred forty hours of compensatory time, as the case may
24 be, shall be paid overtime compensation for additional hours

25 of work. If compensation is paid to an employee for accrued
26 compensatory time, the compensation shall be paid at the
27 regular rate earned by the employee at the time the employee
28 received the payment.

29 (c) If employment is terminated, an employee who has
30 accrued compensatory time pursuant to this section, shall be
31 paid for the unused compensatory time at a rate of
32 compensation not less than the higher amount calculated
33 using one of the following formulas:

34 (1) The average regular rate received by the employee
35 during the first three years of the employee's employment; or

36 (2) The final regular rate received by the employee.

37 (d) An employee who has accrued compensatory time as
38 authorized by this section, and who has requested the use of
39 compensatory time, shall be permitted by the employer to use
40 this time within a reasonable period after making the request
41 if the use of the compensatory time does not unduly disrupt
42 the operation of the employing agency. Compensatory time
43 must be used within one year from the time it is accrued.

**§18B-7-11. Employees designated as nonclassified; limits;
exceptions; reports required.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, by July 1, 2015, the percentage of personnel placed
3 in the category of "nonclassified" at a higher education
4 organization may not exceed twenty percent of the total
5 number of classified and nonclassified employees of that
6 organization as those terms are defined in section two, article
7 nine-a of this chapter and who are eligible for membership in
8 a state retirement system of the State of West Virginia or
9 other retirement plan authorized by the state.

10 A higher education organization which has more than
11 twenty percent of its employees placed in the nonclassified
12 category as defined by this subsection on July 1, 2011, shall
13 reduce the number of nonclassified employees to no more
14 than twenty-five percent by July 1, 2013, and to no more than
15 twenty percent by July 1, 2015, except as set forth in
16 subsections (b) and (c) of this section.

17 (b) For the purpose of determining the ratio of
18 nonclassified employees pursuant to this section, the
19 following conditions apply:

20 (1) Employees of the commission and the chancellor for
21 higher education and employees of the council and the
22 chancellor for community and technical college education are
23 considered as one organization;

24 (2) Organizations may count as faculty or classified
25 employees, respectively, administrators who retain the right
26 to return to faculty or classified employee positions; and

27 (3) Athletic coaches are excluded from calculation of the
28 ratio. The commission and the council shall include
29 consideration of this employee category in each review
30 required by section nine of this article and shall monitor
31 organizations' use of this category and include this
32 information in the reports required by subsections (a) and (b),
33 section eight of this article.

34 (c) An organization may place up to twenty-five percent
35 of the total number of classified and nonclassified employees
36 of that organization as defined by this section in the
37 nonclassified category under the following conditions:

38 (1) The governing board of an institution votes to
39 approve any percentage or fraction of a percentage number
40 above twenty percent and seeks and receives the approval of
41 the commission or council, as appropriate, before increasing
42 the total above twenty percent.

43 (2) In the case of personnel employed by the commission
44 and the council, the chancellors jointly shall agree to increase
45 the percentage number or fraction of a number of
46 nonclassified employees beyond twenty percent and shall
47 recommend this action to their respective boards for
48 approval.

49 (A) The commission and council each shall approve or
50 disapprove the increase and shall include the vote, as well as
51 details of the position and justification for placing the
52 position in the nonclassified category, in its minute record.

53 (B) The number of nonclassified personnel may not be
54 increased above twenty percent unless the increase is
55 approved by both the commission and the council.

56 (3) *Powers and duties of Commission and Council*
57 *regarding nonclassified staff ratios. --*

58 (A) It is the duty of the commission and council jointly
59 to establish criteria for the purpose of making decisions on
60 approving or disapproving requests by organizations to
61 exceed the twenty percent limit for personnel placed in the
62 nonclassified category;

63 (B) The commission and council shall provide technical
64 assistance to organizations under their respective jurisdictions
65 in collecting and interpreting data to ensure that they fulfill
66 the requirements established by this section. Consideration
67 of these issues shall be made part of each review required by
68 section nine of this article and information from the review
69 included in the reports required by subsections (a) and (b),
70 section eight of this article;

71 (C) The chancellors shall monitor the progress of the
72 organizations in meeting the deadlines established in this
73 section and shall report periodically to the council and

74 commission. The commission and council shall make a
75 preliminary compliance report to the Legislative Oversight
76 Commission on Education Accountability by September 1,
77 2013, and a final report on organization compliance to that
78 body by September 1, 2015.

79 (D) Subject to a joint recommendation by the commission
80 and the council and subsequent affirmative action by the
81 Legislature to extend the authority beyond the specified date
82 of termination, the authority of an organization to place more
83 than twenty percent of its personnel in the nonclassified
84 category pursuant to this section expires on July 1, 2016.

85 (d) The current annual salary of a nonclassified employee
86 may not be reduced if his or her position is redefined as a
87 classified position solely to meet the requirements of this
88 section. If such a nonclassified employee is reclassified, his
89 or her salary does not constitute evidence of inequitable
90 compensation in comparison to other employees in the same
91 paygrade.

**§18B-7-12. Additional employment by mutual agreement;
agreement to be filed with governing board.**

1 In accordance with duly promulgated rules of the
2 governing board and the commission or council, as
3 appropriate, the president of an organization, or his or her
4 designated representative, and a classified employee at the
5 organization may agree mutually on duties to be performed
6 by the employee in addition to those duties listed in the job
7 description. The written agreement shall describe the
8 additional duties to be performed, the length of time the
9 agreement shall be in force and the additional compensation
10 to be paid. These terms and conditions shall be agreed upon
11 by the president and the classified employee and shall be
12 signed by both parties to the agreement and filed with the
13 appropriate governing board.

§18B-7-13. Probationary employment period; evaluation.

1 Each full-time classified employee hired by an
2 organization shall serve an initial probationary period of six
3 months. At the end of the probationary period, the employee
4 shall receive a written evaluation of his or her performance.
5 The employee's supervisor shall meet with the employee and
6 explain the contents of the evaluation and whether the
7 employee is being offered regular employment.

§18B-7-14. Higher education employees' catastrophic leave bank and leave transfer.

1 (a) For the purposes of this section, "employee" means
2 either of the following:

3 (1) A classified or nonclassified employee who is
4 employed by a higher education governing board, by the
5 commission or by the council; or

6 (2) A faculty member, as defined in section one, article
7 eight of this chapter, who is eligible to accrue sick leave.

8 (b) An employee may donate sick and annual leave to a
9 leave bank established and operated in accordance with
10 subsection (d) of this section or directly to another employee
11 in accordance with subsection (e) of this section. No
12 employee may be compelled to donate sick or annual leave.
13 Any leave donated by an employee pursuant to this section
14 shall be used only for the purpose of catastrophic illness or
15 injury as defined in subsection (c) of this section and shall
16 reduce, to the extent of such donation, the number of days of
17 annual or sick leave to which the employee is entitled.

18 (c) For the purpose of this section, a catastrophic illness
19 or injury is one that is expected to incapacitate the employee
20 and create a financial hardship because the employee has

21 exhausted all sick and annual leave and other paid time off.
22 Catastrophic illness or injury also includes an incapacitated
23 immediate family member as defined by a governing board,
24 the commission or the council, as appropriate, if this results
25 in the employee being required to take time off from work for
26 an extended period of time to care for the family member and
27 if the employee has exhausted all sick and annual leave and
28 other paid time off.

29 (d) A leave bank or banks may be established at each
30 state institution of higher education, the commission or the
31 council to which employees may donate either sick or annual
32 leave. The bank or banks may be established jointly by the
33 policy commission and the governing boards or may be
34 established for the commission, the council, and each of the
35 governing boards. Sick or annual leave may be deposited in
36 the leave bank, and shall be reflected as a day-for-day
37 deduction from the sick or annual leave balance of the
38 depositing employee.

39 Donated leave may be withdrawn by any employee
40 experiencing a catastrophic illness or injury when the
41 following conditions are met:

42 (1) The president of the institution or the chancellor of
43 the commission or the council, as appropriate, verifies that
44 the employee is unable to work due to the catastrophic illness
45 or injury; and

46 (2) The president of the institution or a chancellor, as
47 appropriate, approves the withdrawal and provides written
48 notice to the personnel office.

49 The withdrawal shall be reflected as a day-for-day
50 addition to the leave balance of the withdrawing employee.

51 (e) Sick or annual leave may be donated to an employee
52 experiencing a catastrophic illness or injury. The leave shall

53 be donated at the request of the employee after appropriate
54 verification that the employee is unable to work due to the
55 catastrophic illness or injury as determined by the president
56 of the institution or the appropriate chancellor. When transfer
57 of sick or annual leave is approved by the president of the
58 institution or the appropriate chancellor, any employee may
59 donate sick or annual leave in one-day increments by
60 providing written notice to the personnel office. Donations
61 shall be reflected as a day-for-day deduction from the sick or
62 annual leave balance of the donating employee. An
63 employee receiving the donated sick or annual leave shall
64 have any time which is donated credited to his or her account
65 in one-day increments and reflected as a day-for-day addition
66 to the leave balance of the receiving employee.

67 (f) Use of donated credits may not exceed a maximum of
68 twelve continuous calendar months for any one catastrophic
69 illness or injury.

70 (1) The total amount of sick or annual leave withdrawn
71 or received may not exceed an amount sufficient to ensure
72 the continuance of regular compensation and may not be used
73 to extend insurance coverage pursuant to section thirteen,
74 article sixteen, chapter five of this code.

75 (2) An employee withdrawing or receiving donations of
76 sick or annual leave pursuant to this section shall use any
77 leave personally accrued on a monthly basis prior to
78 receiving additional donated sick or annual leave.

79 (g) Donated sick or annual leave deposited in an
80 institutional leave bank or transferred under subsection (d) of
81 this section may be inter-institutional in accordance with the
82 policies of the appropriate governing board. Each institution,
83 the commission or the council is responsible for the
84 administration of the sick or annual leave deposits,
85 withdrawals and transfers of its employees. Rules

86 implementing the provisions of this section may be adopted
 87 jointly or separately by the governing boards, the commission
 88 or the council in accordance with section six, article one of
 89 this chapter and, in the case of the commission and council,
 90 in accordance with article three-a, chapter twenty-nine-a of
 91 this code.

§18B-7-15. Merit increases.

1 Higher education organizations may grant merit increases
 2 which are in accordance with this article and articles eight,
 3 nine and nine-a of this chapter and with duly promulgated
 4 rules of the commission and council.

§18B-7-16. Study of employment practices.

1 (a) The commission and council shall study the following
 2 issues relating to employment practices:

3 (1) Developing a fair and rational policy based upon best
 4 human resources practices for covering reductions in force,
 5 furloughs and other issues relating to seniority including
 6 determining how employees shall be treated whose salaries
 7 are derived from funds other than state appropriations;

8 (2) Determining the advantages and disadvantages of
 9 maintaining the internal preferences for hiring, promoting
 10 and transferring classified employees;

11 (3) Collecting and analyzing data and developing
 12 recommendations on the advantages and disadvantages of
 13 outsourcing certain functions at the organization level. The
 14 data shall include, but are not limited to, the following items:

15 (A) A current database of outsourcing practices followed
 16 by each organization including procedures or rules developed
 17 to inform policy decisions;

18 (B) The total number, disaggregated by organization, of
19 positions or services being outsourced or filled by temporary
20 employees;

21 (C) The amount of actual cost savings, if any, that are
22 realized or may be realized as a direct result of organizations'
23 outsourcing decisions;

24 (4) Recommending a rational, uniform policy to
25 determine the status of employees whose positions are
26 funded, in whole or in part, by an external grant or contract
27 from a federal, state or local government or a private entity.

28 (b) The commission and council shall complete the work
29 and report their findings, conclusions and recommendations,
30 together with drafts of any legislation necessary to effectuate
31 the recommendations, to the Legislative Oversight
32 Commission on Education Accountability no later than
33 January 1, 2012.

ARTICLE 8. HIGHER EDUCATION FACULTY.

§18B-8-1. Definitions.

1 As used in this article:

2 (a) "Academic rank", "rank" or "faculty rank" means the
3 position held by a faculty member as determined by the
4 president, consistent with a rule promulgated and adopted by
5 the governing board, and includes the positions of professor,
6 associate professor, assistant professor and instructor. All
7 other ranks are excluded from the provisions of this article.

8 (b) "Salary" means the total nine-month or ten-month
9 salary paid from state funds to a full-time faculty member, or
10 if the employment period is other than nine or ten months, the
11 total salary adjusted to a nine-month base salary;

12 (c) "Full-time faculty" means a faculty member so
13 designated by the president, consistent with the duly
14 promulgated and adopted rule of the appropriate governing
15 board, and those persons with faculty rank who have research
16 or administrative responsibilities.

**§18B-8-2. Faculty salary rules; salary increase upon promotion
in rank.**

1 (a) Each governing board shall promulgate and adopt a
2 faculty salary rule in accordance with section six, article one
3 of this chapter which furthers the goals of attracting, retaining
4 and rewarding high quality faculty. Faculty salary increases
5 shall be distributed within each organization in accordance
6 with the faculty salary rule.

7 (b) The salary of a full-time faculty member may not be
8 reduced by the provisions of this article.

9 (c) The faculty salary rule shall pursue the following
10 goals:

11 (1) The salary of each full-time faculty member within a
12 discipline group is competitive with those in similar
13 disciplines at peer institutions;

14 (2) Faculty are recognized for outstanding performance;

15 (3) Equity among salaries is maintained; and

16 (4) The faculty at each institution are involved effectively
17 in the administration of the faculty salary rule.

18 (d) Each faculty member shall receive a salary increase
19 of at least ten percent when he or she is promoted in rank.

§18B-8-3. Authority to grant sabbatical leave.

1 A governing board may grant sabbatical leave to a faculty
2 member at the state institution of higher education under its
3 jurisdiction for the purpose of permitting him or her to
4 engage in graduate study, research or other activities
5 calculated to improve teaching ability. A governing board
6 may grant a request for sabbatical leave only in accordance
7 with the uniform rule it has promulgated and adopted. A
8 governing board may not adopt a rule which provides for
9 granting sabbatical leave to a faculty member who has served
10 fewer than six years at the institution where presently
11 employed, nor which provides for leave for more than one
12 half the contract period at full pay or for a full contract period
13 at half pay. A faculty member receiving a sabbatical leave is
14 required to return and serve the institution granting the leave
15 for at least one year or to repay to the institution the
16 compensation received during leave. A faculty member
17 returning from leave shall be reinstated at the academic rank
18 held immediately prior to taking sabbatical leave unless he or
19 she is promoted to a higher rank and is entitled to the salary
20 and any salary increases appropriate to his or her rank and
21 years of experience. The compensation for a faculty member
22 on sabbatical leave is paid by the institution where employed
23 from its regular personal services appropriations.

**§18B-8-4. Effect of leave of absence on academic tenure, rank,
etc.**

1 (a) Notwithstanding any provision of law to the contrary,
2 a tenured professional at a state institution of higher
3 education who is absent from duties at the institution to
4 accept employment in a nonelected governmental capacity is
5 afforded the benefits of academic tenure, rank and position as
6 if he or she had remained continuously in the position
7 retained and held at the institution immediately preceding the
8 absence if the following conditions are met:

9 (1) The absence is approved by the president of the state
10 institution of higher education by which the professional is
11 employed;

12 (2) The leave of absence does not exceed two years; or

13 (3) If the leave of absence extends for more than two
14 years, the president requests approval from the governing
15 board for the absence in writing each year and the board
16 approves each request up to eight full years.

17 (b) An individual who remains in governmental
18 employment with leave granted in accordance with this
19 section forfeits all rights to academic tenure, rank and
20 position formerly held at the employing institution at the end
21 of the eighth year of government employment.

**§18B-8-5. Notice to probationary faculty members of retention
or nonretention; hearing.**

1 (a) For the purposes of this section, "Probationary faculty
2 member" means the definition adopted in a joint rule
3 promulgated by the commission and council. The rights
4 provided to probationary faculty members by this section are
5 in addition to, and not in lieu of, other rights afforded to them
6 by other rules and other provisions of law.

7 (b) The president of each state institution of higher
8 education shall give written notice concerning retention or
9 nonretention for the ensuing academic year to a probationary
10 faculty member not later than March 1.

11 (c) If a probationary faculty member who is not retained
12 so requests, the president or his or her designee shall inform
13 the probationary faculty member by certified mail within ten
14 days of the reasons for nonretention. A probationary faculty
15 member who desires to appeal the decision may proceed to

16 level three of the grievance procedure established in article
17 two, chapter six-c of this code. If the administrative law
18 judge decides that the reasons for nonretention are arbitrary,
19 capricious or without a factual basis, the faculty member
20 shall be retained for the ensuing academic year.

**§18B-8-6. Faculty employment practices; campus
administrators required to teach or perform
research.**

1 Each governing board, with the advice and assistance of
2 the faculty senate, shall promulgate and adopt a rule in
3 accordance with section six, article one of this chapter
4 addressing the following issues:

5 (a) Defining an appropriate balance between full-time
6 and adjunct faculty members and the appropriate role of
7 adjunct faculty; and

8 (b) Requiring each administrator on each campus who
9 holds faculty rank to teach at least one course during each
10 eighteen-month employment period or to perform on-going
11 research in lieu of teaching.

**ARTICLE 9. TEMPORARY CLASSIFIED EMPLOYEE
SALARY SCHEDULE; CLASSIFICATION
AND COMPENSATION SYSTEM.**

§18B-9-1. Legislative purpose and intent.

1 (a) The purpose of the Legislature in enacting this article
2 is to require the commission and council jointly to
3 implement, control, supervise and manage a complete,
4 uniform system of personnel classification and compensation
5 in accordance with the provisions of this article for classified
6 employees at higher education organizations.

7 (b) It is the intent of the Legislature to require each
8 higher education organization to achieve full funding of the
9 salary schedule established in section three of this article. A
10 higher education organization, as defined in section two,
11 article nine-a of this chapter, is subject to the provisions of
12 this article until full funding is reached.

13 (c) It is further the intent of the Legislature to encourage
14 strongly that each organization dedicate a portion of future
15 tuition increases to fund the classified salary schedule and,
16 after full funding of the salary schedule is achieved, to move
17 toward meeting salary goals for faculty, classified and
18 nonclassified employees.

§18B-9-2. Definitions.

1 The following words have the meanings ascribed to them
2 unless the context clearly indicates a different meaning:

3 (a) “Classified employee” or “employee” means a regular
4 full-time or regular part-time employee of an organization
5 who holds a position that is assigned a particular job title and
6 pay grade in accordance with the personnel classification and
7 compensation system established by this article or by the
8 commission and council;

9 (b) “Job description” means the specific listing of duties
10 and responsibilities as determined by the appropriate
11 governing board, the commission or council and associated
12 with a particular job title;

13 (c) “Job title” means the name of the position or job as
14 defined by the commission and council;

15 (d) “Pay grade” means the number assigned by the
16 commission and council to a particular job title and refers to
17 the vertical column heading of the salary schedule established
18 in section three of this article;

19 (e) "Personnel classification system" means the process
20 of job categorization adopted by the commission and council
21 jointly by which job title, job description, pay grade and
22 placement on the salary schedule are determined;

23 (f) "Salary" means the amount of compensation paid
24 through the State Treasury per annum, excluding those
25 payments made pursuant to section two, article five, chapter
26 five of this code, to an organization employee;

27 (g) "Schedule" or "salary schedule" means the grid of
28 annual salary figures established in section three of this
29 article; and

30 (h) "Years of experience" means the number of years a
31 person has been an employee of the State of West Virginia and
32 refers to the horizontal column heading of the salary schedule
33 established in section three of this article. For the purpose of
34 placement on the salary schedule, employment for nine months
35 or more equals one year of experience, but a classified employee
36 may not accrue more than one year of experience during any
37 given fiscal year. Employment for less than full time or for
38 fewer than nine months during any fiscal year shall be prorated.
39 In accordance with rules established by the commission and
40 council jointly, a classified employee may be granted additional
41 years of experience not to exceed the actual number of years of
42 prior, relevant work or experience at accredited institutions of
43 higher education other than state institutions of higher
44 education.

**§18B-9-3. Temporary higher education classified employee
annual salary schedule.**

1 (a) There is hereby continued a temporary state annual
2 salary schedule for classified employees consisting of a
3 minimum annual salary for each pay grade in accordance
4 with years of experience. Nothing in this article guarantees

5 payment to a classified employee of the salary indicated on
6 the schedule at the actual years of experience. The minimum
7 salary herein indicated shall be prorated for classified
8 employees working fewer than thirty-seven and one-half
9 hours per week. For the purposes of this article and article
10 nine-a, despite any differences in salaries that may occur, a
11 classified employee is equitably compensated in relation to
12 other classified employees in the same pay grade if the
13 following conditions exist:

14 (1) His or her annual salary is at least the minimum salary
15 that was required for his or her pay grade and years of
16 experience on July 1, 2001, on the salary schedule included
17 in this section; and

18 (2) Progress is being made by the institution in meeting
19 the salary goals set out in this article and article nine-a.

20 (b) Nothing in this section requires an appropriation by
21 the Legislature in excess of the legislative funding priorities
22 as set forth in this chapter.

23 (c) For purposes of this article, an organization has
24 achieved full funding of the temporary salary schedule
25 established by this section when it provides, in total, one
26 hundred percent of the funds needed to meet the salary
27 funding target as calculated in October, 2010, in a report,
28 required by a prior enactment of this section, and presented
29 to the Legislative Oversight Commission on Education
30 Accountability. Until an organization has achieved full
31 funding as described and has received certification to this
32 effect from the commission or council, as appropriate, the
33 following requirements apply:

34 (1) Classified salary increases distributed within the
35 organization shall be provided in accordance with the
36 uniform classification and compensation system established

37 by this article and rules of the commission and council and
38 shall be applied toward achieving full funding of the
39 temporary salary schedule; and

40 (2) An organization may not provide discretionary salary
41 increases, including merit or performance-based increases, to
42 the president or chief executive officer of an organization or
43 to any group or class of employees within the organization,
44 other than classified employees, unless the organization has
45 achieved full funding of the salary schedule established in
46 this section or is making appropriate progress toward
47 achieving full funding of the salary schedule.

48 (A) This prohibition does not apply to salary increases
49 mandated by law or funded by the Legislature.

50 (B) For the purposes of subdivision (2) of this subsection,
51 “appropriate progress” has the following meanings:

52 (i) For governing boards under the jurisdiction of the
53 commission, appropriate progress means an organization has
54 funded at least twenty-five percent of the amount needed to
55 reach full funding of the salary schedule by July 1, 2012 as
56 calculated pursuant to this subsection; has funded at least
57 fifty percent of the calculated amount by July 1, 2013; has
58 funded at least seventy-five percent of the calculated amount
59 by July 1, 2014 and has funded one hundred percent of the
60 calculated amount by July 1, 2015; and

61 (ii) For governing boards under the jurisdiction of the
62 council, appropriate progress means an organization has
63 funded at least twenty-five percent of the amount needed to
64 reach full funding of the salary schedule by July 1, 2013 as
65 calculated pursuant to this subsection; has funded at least
66 fifty percent of the calculated amount by July 1, 2014; has
67 funded at least seventy-five percent of the calculated amount

68 by July 1, 2015 and has funded one hundred percent of the
69 calculated amount by July 1, 2016.

**TEMPORARY HIGHER EDUCATION
CLASSIFIED EMPLOYEE ANNUAL
SALARY SCHEDULE YEARS OF EXPERIENCE**

PAY GRADE	0	1	2	3	4	5	6	7
1	12,809	13,094	13,385	13,677	13,968	14,274	14,580	14,900
2	13,465	13,764	14,070	14,376	14,696	15,017	15,352	15,687
3	14,164	14,478	14,798	15,133	15,483	15,832	16,182	16,546
4	14,908	15,250	15,599	15,949	16,313	16,692	17,085	17,478
5	15,696	16,066	16,444	16,837	17,231	17,624	18,046	18,469
6	16,556	16,954	17,362	17,784	18,207	18,644	19,081	19,547
7	17,489	17,915	18,352	18,804	19,255	19,721	20,202	20,697
8	18,495	18,949	19,416	19,896	20,391	20,901	21,411	21,950
9	19,559	20,056	20,566	21,091	21,615	22,168	22,722	23,290
10	19,916	20,421	20,938	21,484	22,029	22,602	23,176	23,763
11	21,107	21,665	22,239	22,812	23,400	24,015	24,645	25,288
12	22,436	23,022	23,624	24,253	24,896	25,554	26,225	26,924
13	23,837	24,477	25,134	25,805	26,505	27,218	27,945	28,701
14	25,363	26,057	26,771	27,498	28,253	29,022	29,806	30,631
15	27,015	27,764	28,533	29,330	30,141	30,981	31,834	32,715
16	28,821	29,624	30,449	31,316	32,197	33,092	34,030	34,981
17	30,767	31,638	32,533	33,470	34,421	35,400	36,421	37,456
18	32,868	33,820	34,799	35,806	36,841	37,904	39,009	40,142
19	37,613	38,718	39,855	41,022	42,219	43,460	44,747	46,064
20	40,265	41,471	42,712	43,984	45,301	46,647	48,038	49,460
21	43,171	44,478	45,824	47,216	48,637	50,103	51,614	53,170
22	46,332	47,754	49,220	50,731	52,272	53,873	55,534	57,224
23	49,777	51,330	52,931	54,561	56,252	58,002	59,797	61,653
24	53,552	55,234	56,970	58,750	60,605	62,505	64,465	66,485
25	57,462	59,483	61,383	63,328	65,348	67,427	69,567	71,781

PAY GRADE	8	9	10	11	12	13	14	15
1	15,221	15,541	15,876	16,226	16,575	16,939	17,304	17,682
2	16,036	16,386	16,750	17,129	17,507	17,886	18,294	18,687
3	16,925	17,304	17,697	18,090	18,498	18,920	19,343	19,780
4	17,872	18,279	18,702	19,139	19,576	20,027	20,493	20,959
5	18,906	19,343	19,794	20,260	20,741	21,222	21,717	22,227
6	20,013	20,479	20,974	21,469	21,994	22,518	23,057	23,596
7	21,192	21,717	22,241	22,780	23,334	23,902	24,484	25,081
8	22,489	23,042	23,610	24,193	24,805	25,416	26,043	26,684
9	23,887	24,484	25,096	25,737	26,378	27,048	27,732	28,417
10	24,379	25,008	25,638	26,295	26,980	27,666	28,379	29,106
11	25,945	26,617	27,316	28,015	28,757	29,498	30,267	31,064
12	27,638	28,365	29,120	29,890	30,687	31,498	32,323	33,176
13	29,470	30,267	31,078	31,918	32,771	33,652	34,561	35,484

14	31,470	32,323	33,204	34,114	35,051	36,002	36,981	38,002
15	33,624	34,561	35,512	36,505	37,512	38,547	39,624	40,715
16	35,974	36,981	38,030	39,093	40,198	41,331	42,492	43,694
17	38,519	39,624	40,757	41,918	43,121	44,352	45,611	46,925
18	41,303	42,506	43,736	44,995	46,296	47,639	49,023	50,450
19	47,410	48,801	50,238	51,719	53,230	54,801	56,416	58,062
20	50,941	52,452	54,023	55,623	57,284	58,990	60,755	62,550
21	54,786	56,431	58,137	59,902	61,712	63,568	65,482	67,472
22	58,975	60,785	62,640	64,555	66,530	68,579	70,674	72,828
23	63,568	65,527	67,562	69,656	71,826	74,040	76,344	78,708
24	68,579	70,734	72,948	75,237	77,601	80,039	82,552	85,156
25	74,070	76,419	78,842	81,356	83,944	86,607	89,360	92,202

§18B-9-4. Classified employee salary; payment beyond salary schedule; conditions.

1 (a) The current annual salary of a classified employee
 2 may not be reduced by the provisions of this article nor by
 3 any other action inconsistent with the provisions of this
 4 article.

5 (b) Nothing in this article prohibits promotion of a
 6 classified employee to a job title carrying a higher pay grade
 7 if the promotion is in accordance with the provisions of this
 8 article, the personnel classification and compensation system
 9 and personnel rules of the commission and council.

10 (c) An organization may pay classified employees in
 11 excess of the salary established for their pay grade and years
 12 of experience indicated on the salary schedule established by
 13 section three of this article under the following conditions:

14 (1) The commission or council, as appropriate, certifies
 15 that the organization has achieved full funding; and

16 (2) The governing board has promulgated and adopted a
 17 salary rule in accordance with section six, article one of this
 18 chapter and the rules of the commission and council
 19 establishing a procedure to ensure that salary increases above
 20 the temporary salary schedule are distributed equitably and
 21 in a manner that is consistent with the uniform classification
 22 and compensation system.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.**§18B-9A-1. Legislative intent and purpose.**

1 (a) The intent of the Legislature in enacting this article is
2 to establish the classification and compensation system for
3 certain employees of higher education organizations and
4 apply recognized best human resources practices in order to
5 use available resources in the most effective and efficient
6 manner for the benefit of the citizens of West Virginia.

7 It is further the intent of the Legislature to establish a
8 plan that is fair, accountable, credible, transparent and
9 systematic. In recognition of the importance of these
10 qualities, this article, together with articles seven, eight and
11 nine of this chapter, is designated and may be cited as
12 “FACTs for Higher Education”.

13 (b) In furtherance of the principles described in
14 subsection (a) of this section, the chief purposes of the
15 classification and compensation system are to accomplish the
16 following objectives:

17 (1) Develop and implement a classification and
18 compensation system that is fair, transparent, understandable,
19 simple to administer, self-regulating and adaptable to meet
20 future goals and priorities;

21 (2) Provide current, reliable data to governing boards, the
22 commission, the council, the Governor and the Legislature to
23 inform the decision-making process of these policymakers;

24 (3) Attract well-qualified and diverse job applicants and
25 retain and motivate employees to accomplish the goals,
26 objectives and priorities identified in state law, rules of the
27 commission and council, the statewide master plans for
28 higher education and the institutions’ compacts;

29 (4) Retain and reward employees who make valuable
30 contributions to state and organization goals, objectives and
31 priorities;

32 (5) Compensate employees within an organization fairly
33 in relation to one another;

34 (6) Compensate employees across organizations who are
35 performing similar work at similar wage rates;

36 (7) Compensate employees at levels that are competitive
37 with appropriate external markets and are fiscally responsible;

38 (8) Improve the process for evaluating jobs, including,
39 but not limited to, mandating training and development in
40 best human resources practices and directing that key terms,
41 job titles and evaluation forms are consistent across
42 organizations; and

43 (9) Ensure that regular market salary analyses are
44 performed to determine how organization compensation for
45 all classes of employees compares to compensation in
46 relevant external markets.

§18B-9A-2. Definitions.

1 As used in this article and articles seven, eight and nine
2 of this chapter, the following words have the meanings
3 ascribed to them unless the context clearly indicates a
4 different meaning:

5 (a) “Classification system” means the process by which
6 jobs, job titles, career ladders and assignment to pay grades
7 are determined.

8 (b) “Classified employee” or “employee” means any
9 regular employee of an organization who holds a position

10 that is assigned a particular job and job title within the
11 classification system established by this article, article nine
12 and by duly promulgated and adopted rules of the
13 commission and council.

14 (c) “Job” means the total collection of tasks, duties and
15 responsibilities assigned to one or more individuals whose
16 work is of the same nature and level.

17 (d) “Job description” means a summary of the most
18 important features of a job, including the general nature and
19 level of the work performed.

20 (e) “Job evaluation” means a formal process used to
21 create a job worth hierarchy.

22 (f) “Job family” means a group of jobs having the same
23 nature of work, but requiring different levels of skill, effort,
24 responsibility or working conditions.

25 (g) “Job title” means the descriptive name for the total
26 collection of tasks, duties and responsibilities assigned to one
27 or more individuals whose positions have the same nature of
28 work performed at the same level.

29 (h) “Job worth hierarchy” means the perceived internal
30 value of jobs in relation to each other within an organization.

31 (i) “Nonclassified employee” means an employee of an
32 organization who holds a position that is not assigned a
33 particular job and job title within the classification system
34 established by this article, article nine, and by duly
35 promulgated and adopted rules of the commission and
36 council and who meets one or more of the following criteria:

37 (1) Holds a direct policy-making position at the
38 department or organization level; or

39 (2) Reports directly to the president or chief executive
40 officer of the organization.

41 (j) "Organization" means the commission, the council, an
42 agency or entity under the respective jurisdiction of the
43 commission or the council or a state institution of higher
44 education as defined in section two, article one of this
45 chapter.

46 (k) "Pay grade" means the level to which a job is
47 assigned within a job worth hierarchy.

48 (l) "Point factor methodology" means a quantitative job
49 evaluation process in which elements of a job are given a
50 factor value and each factor is weighted according to its
51 importance.

52 (m) "Position description" means a summary of the total
53 duties and responsibilities of a position based on factors
54 provided in the position information questionnaire (PIQ).

55 (n) "Position information questionnaire" or "PIQ" means
56 a tool used in the creation and evaluation of position
57 descriptions and includes the factors of knowledge,
58 experience, complexity and problem solving, freedom of
59 action, scope and effect, breadth of responsibility, intra-
60 systems contacts, external contacts, direct supervision of
61 personnel, indirect supervision of personnel and health,
62 safety and physical considerations.

63 (o) "Step" means a standard progression in pay rate that
64 is established within a pay grade.

§18B-9A-3. Applicability.

1 (a) The provisions of this article apply to employees
2 whose employment, if continued, accumulates to a minimum

3 total of one thousand forty hours during a calendar year and
4 extends over at least nine months of a calendar year.

5 (b) Until the commission or council, as appropriate, has
6 certified that an organization has achieved full funding of the
7 temporary classified employee annual salary schedule or is
8 making appropriate progress toward attaining full funding as
9 defined by section three, article nine of this chapter, the
10 organization is subject to article nine of this chapter and may
11 not exercise flexibility provisions in any area of human
12 resources identified in this chapter or in commission and
13 council rule.

**§18B-9A-4. Job classification system; job classification
committee established; membership; meetings;
powers and duties.**

1 (a) The commission and council jointly shall maintain a
2 uniform system for classifying jobs and positions of
3 organization employees.

4 (b) Pursuant to the rule authorized in section seven of this
5 article, the commission and council jointly shall establish and
6 maintain a job classification committee.

7 The rule shall contain the following provisions related to
8 the job classification committee:

9 (A) A systematic method for appointing committee
10 members who are representative of all the higher education
11 organizations and affected constituent groups including
12 specifically providing for membership selections to be made
13 from nominations from these higher education organizations
14 and affected constituent groups;

15 (B) A requirement that members be approved by the
16 commission and council before beginning service on the
17 committee;

18 (C) A requirement that an organization may have no more
19 than two members serving on the committee at any time and
20 the combined membership representing various groups or
21 divisions within or affiliated with an organization in total
22 may not constitute a majority of the membership; and

23 (D) A requirement that committee members serve
24 staggered terms. One third of the initial appointments shall
25 be for two years, one third for three years and one third for
26 four years. Thereafter, the term is four years. A member
27 may not serve more than four years consecutively.

28 (c) Powers and duties of the committee include, but are
29 not limited to, the following:

30 (1) Modifying and deleting jobs and assigning job titles;

31 (2) Reviewing and revising job titles to make them
32 consistent among organizations, including adopting
33 consistent title abbreviations;

34 (3) Establishing job worth hierarchies and data lines for
35 each job title;

36 (4) Classifying jobs, establishing proper pay grades and
37 placing jobs in pay grades consistent with the job evaluation
38 plan;

39 (5) Determining when new job titles are needed and
40 creating new job titles within the system;

41 (6) Recommending base pay enhancements for jobs for
42 which the application of point factor methodology produces
43 significantly lower salaries than external market pricing. The
44 committee may exercise this authority only if it reevaluates
45 each job annually to make a determination whether the
46 enhancement should be continued;

47 (7) Recommending a procedure for performing job family
48 reviews;

49 (8) Determining appropriate career ladders within the
50 classification system and establishing criteria for career
51 progression; and

52 (9) Hearing job classification appeals prior to
53 commencement of the formal grievance process pursuant to
54 commission and council rule.

55 (d) The committee shall meet monthly if there is business
56 to conduct and also may meet more frequently at the call of
57 the chair. A majority of the voting members serving on the
58 committee at a given time constitutes a quorum for the
59 purpose of conducting business.

60 (e) When evaluating jobs, the committee shall use the
61 following procedure:

62 (1) Each committee member shall classify each job
63 individually, independently of other members;

64 (2) The chair shall compile and share the individual
65 evaluations with the whole committee; and

66 (3) After discussing the issues and resolving differences,
67 the committee shall make a determination of the appropriate
68 classification for each job.

69 (f) The commission and council shall use a point factor
70 methodology to classify jobs. The commission and council
71 jointly may adjust the job evaluation plan, including the factors
72 used to classify jobs and their relative values, at any time.

73 (g) No later than July 1, 2012, the commission and council
74 shall have in place an up-to-date job description for every
75 classified job.

76 (h) The commission and council shall develop a position
77 information questionnaire to be used by all organizations to
78 gather data necessary for classification of positions within the
79 job worth hierarchy.

**§18B-9A-5. Compensation planning and review committee
established; membership; meetings; powers
and duties.**

1 (a) Pursuant to the rule authorized in section seven of this
2 article, the commission and council jointly shall establish and
3 maintain a compensation planning and review committee.

4 (b) Within the guidelines established in this article and
5 articles seven, eight and nine of this chapter, the committee
6 shall manage all aspects of compensation planning and
7 review that the commission and council jointly delegate to it.

8 The rule shall contain the following requirements related
9 to the compensation planning and review committee:

10 (1) A systematic method for appointing committee
11 members who are representative of all the higher education
12 organizations and affected constituent groups including
13 specifically providing for membership selections to be made
14 from nominations from these higher education organizations
15 and affected constituent groups; and

16 (2) A requirement that members be approved by the
17 commission and council before beginning service on the
18 committee;

19 (3) A requirement that an organization may have no more
20 than two members serving on the committee at any time and
21 the combined membership representing various groups or
22 divisions within or affiliated with an organization in total
23 may not constitute a majority of the membership; and

24 (4) A requirement that committee members serve
25 staggered terms. One third of the initial appointments shall
26 be for two years, one third for three years and one third for
27 four years. Thereafter, the term is four years. A member
28 may not serve more than four years consecutively.

29 (c) The committee shall meet at least quarterly and at
30 other times at the call of the chair. A majority of the voting
31 members serving on the committee at a given time constitutes
32 a quorum for the purpose of conducting business.

33 (d) An institution may not have a majority of the
34 committee members and the combined membership
35 representing various groups or divisions within or affiliated
36 with an organization in total may not constitute a majority of
37 the membership.

38 (e) The Compensation Planning and Review Committee
39 has powers and duties which include, but are not limited to,
40 the following:

41 (1) Making annual recommendations for revisions in the
42 system compensation plan, based on existing economic,
43 budgetary and fiscal conditions or on market study data.

44 (2) Overseeing the five-year external market salary study;

45 (3) Overseeing the annual internal market review;

46 (4) Meeting at least annually with the Job Classification
47 Committee to discuss benchmark jobs to be included in
48 salary surveys, market “hot jobs” that may require a
49 temporary salary adjustment, results of job family reviews,
50 and assessment of current job titles within the classification
51 system for market matches and other issues as the Vice
52 Chancellor for Human Resources, in consultation with the
53 chancellors, determines to be appropriate; and

54 (5) Performing other duties as assigned by the
55 commission and council or as necessary or expedient to
56 maintain an effective classification and compensation system.

57 (f) The commission and council may allow the committee
58 to collapse the three lowest pay grades into a single pay grade
59 and provide for employees to be paid at rates appropriate to
60 the highest of the three lowest pay grades.

§18B-9A-6. Salary structure and salary schedules.

1 (a) The commission and council shall develop and
2 maintain a market salary structure and minimum salary
3 schedules and ensure that all organizations under their
4 respective jurisdictions adhere to state and federal laws and
5 duly promulgated and adopted organization rules.

6 (b) The commission and council may not delegate any of
7 the following duties to the Compensation Planning and
8 Review Committee or the Job Classification Committee:

9 (1) Approval of a classification and compensation rule;

10 (2) Approval of the job evaluation plan;

11 (3) Approval of the annual market salary schedule; and

12 (4) Approval of the annual minimum salary schedule.

13 (c) The market salary structure serves as the basis for the
14 following activities:

15 (1) Evaluating compensation of classified employees in
16 relation to appropriate external markets; and

17 (2) Developing the minimum salary schedules to be
18 adopted by the commission and council.

19 (d) The market salary structure shall meet the following
20 criteria:

21 (1) Sets forth the number of pay grades and steps to be
22 included in the structure;

23 (2) Includes a midpoint value for each pay grade which
24 represents the average salary of jobs in that pay grade. The
25 commission and council may choose a midpoint value that is
26 not based exclusively on market salary data; and

27 (3) Includes minimum and maximum step values based
28 on an established range spread, as well as values for other
29 steps in the salary structure.

30 (e) The commission and council jointly shall contract
31 with an external vendor to conduct a classified employee
32 market salary study at least once within each five-year
33 period. At the conclusion of the study, the commission and
34 council, in consultation with the Compensation Planning and
35 Review Committee, may take any combination of the
36 following actions:

37 (1) Adjust the number of pay grades and the point values
38 necessary for a job to be assigned to a particular pay grade;

39 (2) Adjust the midpoint differentials between pay grades
40 better to reflect market conditions; or

41 (3) Adjust the range spread for any pay grade.

42 (f) The commission and council jointly may perform an
43 annual review of market salary data to determine how
44 salaries have changed in the external market. Based on data
45 collected, the commission and council jointly in consultation
46 with the Compensation Planning and Review Committee,
47 shall adjust the market salary structure, if changes are

48 supported by the data. In the absence of a market salary
49 study conducted by an external vendor, the commission and
50 council may not adjust the midpoint differentials between pay
51 grades unless required to do so by a change in minimum
52 wage or other laws and may not adjust the range spread for
53 any pay grade.

54 (g) Annually, the commission and council may approve
55 a minimum salary schedule that sets forth a compensation
56 level for each step and pay grade below which no
57 organization employee may be paid.

58 (1) The minimum salary floor for each pay grade and step
59 on the minimum salary schedule is determined by applying
60 the percentage fixed by commission and council rule
61 promulgated pursuant to section seven of this article to the
62 annual market salary data. The commission and council also
63 shall consider the minimum wage and other laws that ensure
64 that employees earn a living wage and shall maintain a salary
65 structure which ensures that the average salary of each class
66 of employees meets relative market equity among employee
67 classes. The commission and council may take into
68 consideration other factors they consider appropriate.

69 (2) The salary of an employee working fewer than thirty-
70 seven and one-half hours per week shall be prorated.

71 (h) The organization rule promulgated pursuant to (d),
72 section seven of this article may provide for differential pay
73 for certain employees who work different shifts, weekends or
74 holidays.

**§18B-9A-7. Classification and compensation rules required;
emergency rule authorized.**

1 (a) Notwithstanding any provision of law or rule to the
2 contrary, the commission and council jointly shall design,

3 develop, implement and administer the personnel system of
4 classification and compensation pursuant to this article and
5 articles seven, eight and nine of this chapter. In developing
6 and designing the system, they shall give careful
7 consideration to the recommendations and supporting
8 documentation contained in the *Final Report to the Select*
9 *Committee on Higher Education Personnel*, prepared
10 pursuant to section thirteen, article one-b of this chapter,
11 which was received and approved by the Select Committee
12 on January 11, 2010.

13 (b) *Classification and compensation system rule.* --

14 By November 1, 2011, the commission and council shall
15 propose a joint rule or rules for legislative approval in
16 accordance with article three-a, chapter twenty-nine-a of this
17 code to implement the provisions of this article and articles
18 seven, eight and nine of this chapter. The rule shall establish
19 a classification and compensation system that incorporates
20 best human resources practices and takes into consideration
21 the recommendations of the Legislative Select Committee on
22 Higher Education Personnel. At a minimum, the system rule
23 shall address the areas of organization accountability,
24 employee classification and compensation, performance
25 evaluation and development of organization rules.

26 (1) *Organization accountability.* --

27 The system rule shall provide a procedure for correcting
28 deficiencies identified in the human resources reviews
29 conducted pursuant to section nine, article seven of this
30 chapter. The procedure shall include, but is not limited to,
31 the following components:

32 (A) Specifying a reasonable time for organizations to
33 correct deficiencies uncovered by a review;

34 (B) Applying sanctions when major deficiencies are not
35 corrected within the allotted time:

36 (i) For purposes of this subsection, a major deficiency
37 means an organization has failed to comply with federal or
38 state law or with personnel rules of the commission and
39 council.

40 (ii) When a major deficiency is identified, the
41 commission or council, as appropriate, shall notify the
42 governing board of the institution in writing, giving
43 particulars of the deficiency and outlining steps the governing
44 board is required to take to correct the deficiency.

45 (iii) The governing board shall correct the major
46 deficiency within four months and shall notify the
47 commission or council, as appropriate, when the deficiency
48 has been corrected.

49 (iv) If the governing boards fail to correct the major
50 deficiency or fails to notify the commission or council, as
51 appropriate, that the deficiency has been corrected within a
52 period of four months from the time the governing board
53 receives notification, the commission or council shall apply
54 sanctions as specified:

55 (I) A formal reprimand shall be placed in the personnel
56 file of each key administrator who shares responsibility and
57 has operational authority in the area of the identified
58 deficiency; and

59 (II) Other sanctions may include, but are not limited to,
60 suspending new hiring by the organization and prohibiting
61 compensation increases for key administrators who have
62 authority over the areas of major deficiency until the
63 identified deficiencies are corrected.

64 (C) Certifying that an organization has achieved full
65 funding of the temporary annual classified employee salary
66 schedule or is making appropriate progress toward achieving
67 full funding pursuant to section three, article nine of this
68 chapter.

69 (2) *Employee classification and compensation.* -- The
70 system rule shall establish a classification and compensation
71 system to accomplish the following objectives:

72 (A) Moving classified employees through the
73 classification system based on performance and other
74 objective, measurable factors including education, years of
75 experience in higher education and experience above position
76 requirements;

77 (B) Achieving and maintaining appropriate levels of
78 employee dispersion across steps;

79 (C) Assigning each current employee to an initial step for
80 his or her pay grade that is closest to and exceeds his or her
81 current salary regardless of previous education, experience or
82 performance. The rule shall provide that the salary of a
83 current employee may not be reduced by a job
84 reclassification, a modification of the market salary schedule,
85 or other conditions that the commission and the council
86 consider appropriate and reasonable;

87 (D) Establishing a job worth hierarchy and identifying the
88 factors to be used to classify jobs and their relative values
89 and determining the number of points that are necessary to
90 assign a job to a particular pay grade;

91 (E) Establishing an objective standard to be used in
92 determining when a job description or a position description
93 is up-to-date;

94 (F) Providing a procedure whereby a classified employee
95 or a supervisor who believes that changes in the job duties
96 and responsibilities of the employee justify a position review
97 may request that a review be done at any time;

98 (G) Specifying that the acceptable period that may elapse
99 between the time when an employee files a formal request for a
100 position review and the time when the review is completed may
101 not exceed forty-five days. An organization that fails to
102 complete a review within the specified time shall provide the
103 employee back pay from the date the request for review was
104 received if the review, when completed, produces a
105 reclassification of the position into a job in a higher pay grade;

106 (H) Providing a procedure by which employees may file
107 appeals of job classification decisions for review by the Job
108 Classification Committee prior to filing a formal grievance.
109 The committee shall render a decision within sixty days of
110 the date the appeal is filed with the commission or the
111 council;

112 (I) Providing for recommendations from the
113 Compensation Planning and Review Committee and the Job
114 Classification Committee to be considered by the
115 commission and the council and to be included in the
116 legislative reporting process pursuant to section eight, article
117 seven of this chapter; and

118 (J) Establishing and maintaining the job classification
119 committee mandated in section four of this article.

120 (3) *Performance evaluations.* -- The system rule shall
121 provide for developing and implementing a consistent,
122 objective performance evaluation model and shall mandate
123 that training in conducting performance evaluations be
124 provided for all organization personnel who hold supervisory
125 positions.

126 (c) *Emergency rule.* --

127 (1) The Legislature hereby finds that an emergency exists
128 and, therefore, the commission and council shall propose a
129 joint emergency rule or rules by November 1, 2011, in
130 accordance with article three-a, chapter twenty-nine-a of this
131 code to implement the provisions of this article and articles
132 seven, eight and nine of this chapter.

133 (2) The commission and council shall file the emergency
134 rule or rules with the Legislative Oversight Commission on
135 Education Accountability by the date specified in subdivision
136 (1) of this subsection and may not implement the emergency
137 rule or rules without prior approval.

138 (d) *Organization rules.* --

139 (1) Each organization shall promulgate and adopt a rule
140 or rules in accordance with the provisions of section six,
141 article one of this chapter to implement requirements
142 contained in the classification and compensation system rule
143 or rules of the commission and council. The commission and
144 council shall provide a model personnel rule for the
145 organizations under their jurisdiction and shall provide
146 technical assistance in rulemaking as requested.

147 (2) The initial organization rule shall be adopted not later
148 than six months following the date on which the commission
149 and council receive approval to implement the emergency
150 rule promulgated pursuant to this section. Additionally, each
151 organization shall amend its rule to comply with mandated
152 changes not later than six months after the effective date of
153 any change in statute or rules, unless a different compliance
154 date is specified within the statute or rule containing the
155 requirements or mandate.

156 (3) An organization may not adopt a rule under this
157 section until it has consulted with the appropriate employee
158 class affected by the rule's provisions.

159 (4) If an organization fails to adopt a rule or rules as
160 mandated by this subsection, the commission and council
161 may prohibit it from exercising any flexibility or
162 implementing any discretionary provision relating to human
163 resources contained in statute or in a commission or council
164 rule until the organization's rule requirements have been met.

165 (5) Additional flexibility or areas of operational
166 discretion identified in the system rule or rules may be
167 exercised only by an organization which meets the following
168 requirements:

169 (A) Receives certification from the commission or
170 council, as appropriate, that the organization has achieved
171 full funding of the temporary salary schedule or is making
172 appropriate progress toward achieving full funding pursuant
173 to section three, article nine of this chapter;

174 (B) Promulgates a comprehensive classification and
175 compensation rule as required by this section;

176 (C) Receives approval for the classification and
177 compensation rule from the appropriate chancellor in
178 accordance with this section; and

179 (D) Adopts the rule by vote of the organization's
180 governing board.

181 (6) Notwithstanding any provision of this code to the
182 contrary, each chancellor, or his or her designee, has the
183 authority and the duty to review each classification and
184 compensation rule promulgated by an organization under his
185 or her jurisdiction and to recommend changes to the rule to

186 bring it into compliance with state and federal law,
187 commission and council rules or legislative, commission and
188 council intent. Each chancellor may reject or disapprove any
189 rule, in whole or in part, if he or she determines that it is not
190 in compliance with law or rule or if it is inconsistent with
191 legislative, commission and council intent.

§18B-9A-8. Implementation of classification and compensation system.

1 (a) Sweeping cultural changes are needed to implement
2 the recommendations of the Select Committee on Higher
3 Education Personnel and the provisions of this article and
4 articles seven, eight and nine of this code. These kinds of
5 changes require dedication and cooperation from all
6 employee classes across the two systems of public higher
7 education, the commission, council and state policymakers.
8 The primary responsibility for implementation, however,
9 rests with the commission and the council who shall provide
10 leadership and assistance to the human resources
11 professionals within each organization to bring about the
12 changes successfully.

13 (b) The implementation process shall be carried out in
14 incremental steps, some of which may occur simultaneously.
15 The steps include the following:

16 (1) Communicating with organization employees and
17 administrators to acquaint them with the guiding principles
18 of the classification and compensation system. The
19 principles which undergird the policy changes are designed
20 to promote fairness, accountability, credibility, transparency
21 and a systematic approach to progress (FACTS for Higher
22 Education). The discussion shall explain the origin of
23 changes in law and policy and show how these are the result
24 of four years of study culminating in the findings and
25 recommendations contained in the *Final Report to the Select*

26 *Committee on Higher Education Personnel* (January 11,
27 2010).

28 (2) Seeking out credentialed, experienced human
29 resources professionals to provide staff support to the
30 commission, council and organizations, pursuant to section
31 two-a, article four of this chapter, who are committed to
32 creating a culture of constant improvement in a complex and
33 rapidly changing environment. These professionals are
34 catalysts to promote the Fair, Accountable, Credible,
35 Transparent, and Systematic (FACTs) principles and to serve
36 the organizations by assisting them in developing and
37 maintaining best human resources practices.

38 (3) Conducting a review of the human resources function
39 at each organization pursuant to section nine, article seven of
40 this chapter to identify best practices and areas of deficiency.

41 (4) Developing and implementing employee training and
42 professional development pursuant to section six, article
43 seven of this chapter to assist organization professionals in
44 applying the Fair, Accountable, Credible, Transparent, and
45 Systematic principles to all human resources functions.

46 (5) Given that the state is considering a unified enterprise
47 resource program, the commission and council shall conduct
48 a study to determine whether a human resources information
49 system capable of meeting a wide range of data requirements
50 to support personnel and policy initiatives is necessary. The
51 findings of the study, along with any recommendations, shall
52 be reported to the Legislative Oversight Commission on
53 Education Accountability by December 1, 2011.

54 (6) Establishing the Compensation Planning and Review
55 Committee pursuant to section five of this article and the Job
56 Classification Committee pursuant to section four of this
57 article whose members participate and represent a broad

58 range of higher education interests in the decision and policy-
59 making process.

60 (7) Providing data throughout the implementation process
61 to the Legislative Oversight Commission on Education
62 Accountability to inform state policymakers of progress and
63 to provide a forum for further discussion of higher education
64 personnel issues and employee concerns.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER
EDUCATION.**

**§18B-10-1. Enrollment, tuition and other fees at education
institutions; refund of fees.**

1 (a) Each governing board shall fix tuition and other fees
2 for each academic term for the different classes or categories
3 of students enrolling at the state institution of higher
4 education under its jurisdiction and may include among the
5 tuition and fees any one or more of the following as defined
6 in section one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) A governing board may establish a single special
11 revenue account for each of the following classifications of
12 fees:

13 (1) All tuition and required educational and general fees
14 collected;

15 (2) All auxiliary and auxiliary capital fees collected; and

16 (3) All required educational and general capital fees
17 collected to support existing systemwide and institutional
18 debt service and future systemwide and institutional debt
19 service, capital projects and campus renewal for educational
20 and general facilities.

21 (4) Subject to any covenants or restrictions imposed with
22 respect to revenue bonds payable from the accounts, a
23 governing board may expend funds from each special
24 revenue account for any purpose for which funds were
25 collected within that account regardless of the original
26 purpose for which the funds were collected.

27 (c) The purposes for which tuition and fees may be
28 expended include, but are not limited to, health services,
29 student activities, recreational, athletic and extracurricular
30 activities. Additionally, tuition and fees may be used to
31 finance a students' attorney to perform legal services for
32 students in civil matters at the institutions. The legal services
33 are limited to those types of cases, programs or services
34 approved by the president of the institution where the legal
35 services are to be performed.

36 (d) By October 1, 2011, the commission and council each
37 shall propose a rule for legislative approval in accordance
38 with article three-a, chapter twenty-nine-a of this code to
39 govern the fixing, collection and expenditure of tuition and
40 other fees by the governing boards under their respective
41 jurisdictions.

42 (e) The schedule of all tuition and fees, and any changes
43 in the schedule, shall be entered in the minutes of the meeting
44 of the appropriate governing board and the board shall file
45 with the commission or council, or both, as appropriate, and
46 the Legislative Auditor a certified copy of the schedule and
47 changes.

48 (f) The governing boards shall establish the rates to be
49 charged full-time students, as defined in section one-b of this
50 article, who are enrolled during a regular academic term.

51 (1) Undergraduate students taking fewer than twelve
52 credit hours in a regular term shall have their fees reduced
53 pro rata based upon one twelfth of the full-time rate per credit
54 hour and graduate students taking fewer than nine credit
55 hours in a regular term shall have their fees reduced pro rata
56 based upon one ninth of the full-time rate per credit hour.

57 (2) Fees for students enrolled in summer terms or other
58 nontraditional time periods shall be prorated based upon the
59 number of credit hours for which the student enrolls in
60 accordance with this subsection.

61 (g) All fees are due and payable by the student upon
62 enrollment and registration for classes except as provided in
63 this subsection:

64 (1) The governing boards shall permit fee payments to be
65 made in installments over the course of the academic term.
66 All fees shall be paid prior to awarding course credit at the
67 end of the academic term.

68 (2) The governing boards also shall authorize the
69 acceptance of credit cards or other payment methods which
70 may be generally available to students for the payment of
71 fees. The governing boards may charge the students for the
72 reasonable and customary charges incurred in accepting
73 credit cards and other methods of payment.

74 (3) If a governing board determines that a student's
75 finances are affected adversely by a legal work stoppage, it
76 may allow the student an additional six months to pay the
77 fees for any academic term. The governing board shall
78 determine on a case-by-case basis whether the finances of a
79 student are affected adversely.

80 (4) The commission and council jointly shall propose a
81 rule in accordance with article three-a, chapter twenty-nine-a
82 of this code defining conditions under which a governing
83 board may offer tuition and fee deferred payment plans itself
84 or through third parties.

85 (5) A governing board may charge interest or fees for any
86 deferred or installment payment plans.

87 (h) In addition to the other fees provided in this section,
88 each governing board may impose, collect and distribute a
89 fee to be used to finance a nonprofit, student-controlled
90 public interest research group if the students at the institution
91 demonstrate support for the increased fee in a manner and
92 method established by that institution's elected student
93 government. The fee may not be used to finance litigation
94 against the institution.

95 (i) Governing boards shall retain tuition and fee revenues
96 not pledged for bonded indebtedness or other purposes in
97 accordance with the tuition rules proposed by the commission
98 and council pursuant to this section. The tuition rules shall
99 address the following areas:

100 (1) Providing a basis for establishing nonresident tuition
101 and fees;

102 (2) Allowing governing boards to charge different tuition
103 and fees for different programs;

104 (3) Authorizing a governing board to propose to the
105 commission, council or both, as appropriate, a mandatory
106 auxiliary fee under the following conditions:

107 (A) The fee shall be approved by the commission,
108 council or both, as appropriate, and either the students below

109 the senior level at the institution or the Legislature before
110 becoming effective;

111 (B) Increases may not exceed previous state subsidies by
112 more than ten percent;

113 (C) The fee may be used only to replace existing state
114 funds subsidizing auxiliary services such as athletics or
115 bookstores;

116 (D) If the fee is approved, the amount of the state subsidy
117 shall be reduced annually by the amount of money generated
118 for the institution by the fees. All state subsidies for the
119 auxiliary services shall cease five years from the date the
120 mandatory auxiliary fee is implemented;

121 (E) The commission or council or both, as appropriate,
122 shall certify to the Legislature annually by October 1 the
123 amount of fees collected for each of the five years;

124 (4) Establishing methodology, where applicable, to
125 ensure that, within the appropriate time period under the
126 compact, community and technical college tuition rates for
127 students in all community and technical colleges will be
128 commensurate with the tuition and fees charged by their peer
129 institutions.

130 (j) A penalty may not be imposed by the commission or
131 council upon any governing board based upon the number of
132 nonresidents who attend the institution unless the
133 commission or council determines that admission of
134 nonresidents to any institution or program of study within the
135 institution is impeding unreasonably the ability of resident
136 students to attend the institution or participate in the
137 programs of the institution. The governing boards shall
138 report annually to the commission or council on the numbers

139 of nonresidents and any other enrollment information the
140 commission or council may request.

141 (k) Tuition and fee increases of the governing boards,
142 including the governing boards of Marshall University and
143 West Virginia University, are subject to rules adopted by the
144 commission and council pursuant to this section and in
145 accordance with article three-a, chapter twenty-nine-a of this
146 code. The commission or council, as appropriate, shall
147 examine individually each request from a governing board
148 for an increase and make its determinations as follows:

149 (1) A tuition and fee increase greater than five percent for
150 resident students proposed by a governing board requires the
151 approval of the commission or council, as appropriate.

152 (2) A fee used solely for the purpose of complying with the
153 athletic provisions of 20 U.S.C. 1681, *et seq.*, known as Title
154 IX of the Education Amendment of 1972, is exempt from the
155 limitations on fee increases set forth in this subsection for three
156 years from the effective date of the section.

157 (3) In determining whether to approve or deny a
158 governing board's request for a tuition and/or fee increase for
159 resident students greater than the increases granted pursuant
160 to subdivision (1) of this subsection, the commission or
161 council shall determine the progress the governing board has
162 made toward meeting the conditions outlined in this
163 subsection and shall make this determination the predominate
164 factor in its decision. The commission or council shall
165 consider the degree to which each governing board has met
166 the following conditions:

167 (A) Maximizes resources available through nonresident
168 tuition and fee charges to the satisfaction of the commission
169 or council;

170 (B) Consistently achieves the benchmarks established in
171 the compact pursuant to article one-d of this chapter;

172 (C) Continuously pursues the statewide goals for post-
173 secondary education and the statewide compact established
174 in this chapter;

175 (D) Demonstrates to the satisfaction of the commission
176 or council that an increase will be used to maintain high-
177 quality programs at the institution;

178 (E) Demonstrates to the satisfaction of the commission or
179 council that the governing board is making adequate progress
180 toward achieving the goals for education established by the
181 southern regional education board;

182 (F) Demonstrates to the satisfaction of the commission or
183 council that the governing board has considered the average
184 per capita income of West Virginia families and their ability
185 to pay for any increases; and

186 (G) Demonstrates to the satisfaction of the commission
187 or council that base appropriation increases have not kept
188 pace with recognized nation-wide inflationary benchmarks;

189 (4) This section does not require equal increases among
190 governing boards nor does it require any level of increase by
191 a governing board.

192 (5) The commission and council shall report to the
193 Legislative Oversight Commission on Education
194 Accountability regarding the basis for approving or denying
195 each request as determined using the criteria established in
196 this subsection.

CHAPTER 80

**(S. B. 486 - By Senators Laird, Tucker, Plymale,
Kessler (Acting President), Unger, Helmick,
Browning, Stollings, McCabe, Wells and Miller)**

[Passed March 7, 2011; in effect from passage.]
[Approved by the Governor on March 21, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4, all relating to West Virginia University Institute of Technology, West Virginia University and the Higher Education Policy Commission; defining certain terms; establishing a revitalization project and plan; stating legislative findings, purpose and intent; and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4, all to read as follows:

**ARTICLE 1E. WEST VIRGINIA UNIVERSITY INSTITUTE
OF TECHNOLOGY REVITALIZATION
PROJECT.**

§18B-1E-1. Definitions.

1 When used in this article the following words have the
2 meanings ascribed to them unless the context clearly
3 indicates a different meaning:

4 (a) “Center of excellence” means an academic program
5 or group of programs located within a particular state
6 institution, division or branch campus that is addressed in the
7 institution’s compact and recognized by the institution, its
8 governing board, administrators, faculty and staff as having
9 gained a significant degree of regional or national acclaim for
10 high quality and public service.

11 (b) “Chancellor” means the chief executive officer
12 employed by the commission.

13 (c) “Governing board” means the board of governors for
14 West Virginia University established pursuant to section one,
15 article two-a of this chapter.

16 (d) “LOCEA” means the Legislative Oversight
17 Commission on Education Accountability established
18 pursuant to section eleven, article three-a, chapter twenty-
19 nine-a of this code.

20 (e) “Revitalization plan” means the implementation
21 process developed pursuant to section three of this article.

22 (f) “Revitalization project” means the entire process
23 undertaken to further the goals of this article including the
24 research, study, revitalization plan development and
25 implementation designed to assist WVU-Tech to reach its full
26 potential as a center of excellence and positive force for
27 economic development and cultural enrichment in the state.

28 (g) “STEM” mean areas of study in science, technology,
29 engineering and mathematics.

30 (h) “WV-CURE” means the task force created pursuant
31 to section three, article one-c of this chapter.

32 (i) “WV-CURE report” means the findings and
33 recommendations contained in the final document submitted
34 to the Legislature pursuant to section three, article one-c of
35 this chapter.

36 (j) “WVU-Tech” means West Virginia University
37 Institute of Technology, a division of West Virginia
38 University.

§18B-1E-2. Legislative purpose, findings and intent.

1 (a) The purpose of this article is to focus attention on
2 West Virginia University Institute of Technology to honor
3 the institution’s history of excellence and service to the
4 region and the state, to identify its unique role and
5 contributions to higher education and to create and
6 implement the revitalization plan that not only will be used
7 to assist this institution to reach its full potential of service to
8 the citizens of West Virginia, but also may serve as a model
9 that can be replicated at other state institutions of higher
10 education.

11 (b) *Findings.*--

12 (1) WVU-Tech has a distinguished history of more than
13 a hundred years of service, growth and change, but, in
14 addition to the positive advancements, the institution also has
15 dealt with internal conflict and external controversy initiated
16 by multiple changes in policy direction, governance structure
17 and mission. It was founded in 1895 as a preparatory school
18 of West Virginia University and since that time, has
19 functioned as a trade school, a junior college, a free-standing
20 baccalaureate institution and a regional campus of West
21 Virginia University. In 2007, it became a fully-integrated
22 division of West Virginia University.

23 (2) The many changes of name, mission, governance
24 structure and affiliation, together with its location in the heart
25 of the southern coal fields, assure the institution a unique
26 place in the state system of higher education. The institution
27 continues to provide vital education opportunities to the
28 mostly-rural population which comprise its primary service
29 clientele.

30 (3) Both its traditional strength and its unique opportunity
31 for future growth and service lie in its focus on STEM
32 education, particularly in undergraduate engineering and
33 technology, in which it has been a leader for nearly sixty
34 years.

35 (4) The student-centered programs, combined with small
36 classes and individualized instruction, provide undergraduates
37 with opportunities for hands-on research and cooperative work
38 experiences that usually are available only to graduate students.

39 (5) The Legislature further finds the following regarding
40 the state system of higher education:

41 (A) Retention and graduation rates at the state institutions
42 of higher education are a major source of concern for state
43 policymakers.

44 (i) The average retention rate for the state system as a
45 whole, calculated from the fall semester in 2008 to the fall
46 semester of 2009, the most recent period for which data are
47 available, is seventy-three percent. Twenty-seven students
48 out of every one hundred who were enrolled in a state
49 institution of higher education in 2008 did not return for the
50 fall semester in 2009.

51 (ii) On average, of the students who entered four-year
52 state institutions of higher education as first-time freshmen in
53 2004, only forty percent had graduated six years later.

54 (iii) Within these statewide averages there are significant
55 variations among both institutions and disciplines,
56 particularly in the disciplines emphasizing STEM education.
57 Retention rates range from a high of eighty-two percent to a
58 low of fifty-five percent. Six-year graduation rates fall
59 between a high of fifty-nine percent and a low of fifteen
60 percent.

61 (B) According to the WV-CURE report submitted by
62 WV-CURE in 2008, West Virginia faces many of the same
63 challenges in preparing and recruiting STEM professionals
64 as the rest of the country, but in addition has unique
65 challenges related to its population demographics and
66 geography.

67 (C) Due to its unique history and geographical location,
68 WVU-Tech provides the ideal laboratory in which to develop
69 a successful model to address these challenges through the
70 revitalization plan created pursuant to section three of this
71 article.

72 (c) *Legislative intent.* --

73 (1) It is the intent of the Legislature in establishing the
74 revitalization project to encourage WVU-Tech to build upon
75 its tradition of high-quality, student-centered STEM
76 education, to assist the institution to reach its full potential as
77 a center of excellence and a positive force for economic
78 development and cultural enrichment within the community
79 and state, to implement certain recommendations from the
80 WV-CURE report and to create a successful policy model
81 that state decision makers may employ in other areas where
82 state institutions of higher education struggle to overcome
83 similar problems. The revitalization project shall serve as a
84 laboratory in which to identify problems, research solutions
85 and implement those programs and procedures that best meet
86 the intent of this article.

87 (2) It is further the intent of the Legislature to promote
88 institutional stability at WVU-Tech by keeping the
89 governance structure of the institution unchanged until the
90 report required in section four of this article is received in
91 2014. Throughout the WVU-Tech revitalization process, the
92 governing board retains statutory control of the institution.
93 Except for authority otherwise granted by statute, this article
94 extends the commission's authority only to those items
95 identified in the revitalization plan and funded by legislative
96 appropriation therefor.

**§18B-1E-3. Revitalization Project and Plan; Plan approval
required.**

1 (a) There is hereby created the Revitalization Project for
2 WVU-Tech under the direction of the commission. The
3 project includes a study and development of a revitalization
4 plan designed to meet the goals and intent of this article.

5 (b) On the effective date of this section, the commission
6 shall initiate a study and draw upon the expertise of groups
7 both internal and external to West Virginia to take advantage
8 of the services of national organizations specializing in
9 institutional renewal. The commission shall bear the costs of
10 the study.

11 (c) The study shall include, but is not limited to, the
12 following thematic areas:

13 (1) Exploring new academic programs that meet
14 emerging industry needs in West Virginia;

15 (2) Developing distance education and adult-targeted
16 degree and programmatic offerings, with particular attention
17 to avoiding costly program duplication;

18 (3) Examining marketing and recruiting strategies at the
19 institution;

20 (4) Reviewing nonacademic programs and auxiliary
21 operations, focused upon efficiencies and strategic
22 development;

23 (5) Reviewing fiscal and operating procedures,
24 emphasizing initiatives through which the institution can
25 reduce annual operating costs and maximize all available
26 revenues;

27 (6) Evaluating all institutionally-affiliated groups,
28 including the alumni association, the WVU-Tech Foundation
29 and all other institutionally-affiliated organizations which are
30 exempt from taxation pursuant to Section 501(c)(3) of the
31 Internal Revenue Code of 1986, as amended, stressing
32 revitalization of these entities; and

33 (7) Reviewing and assessing the capital infrastructure of
34 the institution.

35 (d) The study also shall include consideration of the
36 following recommendations drawn from the WV-CURE
37 report:

38 (1) Creating and maintaining a forum for meaningful
39 interaction between and among the K-12 and professional
40 communities to define better the needs of the STEM
41 stakeholders at each level of the education and early career
42 process. The forum may help to ensure smoother transitions
43 for students at each step and thereby increase student
44 retention and graduation rates. A cooperative approach with
45 the public schools in the institution's service area may serve
46 as means to increase students' interest and familiarize them
47 with the STEM programs WVU-Tech offers;

48 (2) Preparing students for the future by enhancing student
49 design/capstone experiences to include undergraduate
50 research at an earlier point in the baccalaureate curriculum
51 thereby expanding the focus on opportunities for advanced
52 studies and providing students with enhanced critical
53 thinking and learning skills to adapt to an environment of
54 rapidly changing technologies;

55 (3) Stimulating interest of young people in training and
56 careers in engineering and related disciplines by involving
57 the professional and business communities in a more visible
58 and engaged manner;

59 (4) Diversifying the types of students who pursue STEM
60 education and careers by developing strategic initiatives
61 focused on recruiting and retaining traditionally under-
62 represented groups;

63 (5) Pursuing the goals set forth in section three, article
64 one-c of this chapter to increase West Virginia's capacity for
65 high quality engineering instruction and research; increase
66 access to high quality instruction and research opportunities
67 in STEM disciplines; and stimulate economic development
68 by increasing the number of professional engineers available
69 to business and industry;

70 (6) Exploring opportunities for collaborations between
71 institutions to increase the access to high quality programs
72 while reducing the overall expenditure per student in high
73 cost disciplines; and

74 (7) Developing more electronic classrooms, online
75 programs, and other technology-driven teaching/learning
76 facilities in order to pool resources among the engineering
77 institutions, reach students who are place-bound or who live
78 in rural areas distant from the institution's campus and avoid
79 expensive program duplication.

80 (e) Based upon the research and findings of the study, the
81 Chancellor shall coordinate the development of a
82 revitalization plan to implement the purpose and intent of this
83 article. The revitalization plan shall serve to guide the
84 distribution of all funds appropriated by the Legislature and
85 targeted to the Revitalization Project. The revitalization plan
86 shall include, but is not limited to, the following elements:

87 (1) Providing clear and guiding recommendations for the
88 revitalization of WVU-Tech;

89 (2) Recommending a process for establishing WVU-Tech
90 as a center of excellence in STEM education with particular
91 emphasis on undergraduate engineering and technology,
92 areas in which the institution has earned a high degree of
93 regional and national recognition for excellence. The purpose
94 of the center of excellence is to enable the institution to
95 concentrate its resources on providing state-of-the-art post-
96 secondary education opportunities in a limited number of
97 areas in which the institution excels. The center of excellence
98 approach promotes effective teaching and learning through
99 education, training, research and information dissemination.
100 All parties involved in identifying and developing the center
101 of excellence bring to the partnership their special expertise
102 of strategic importance to the program and, ultimately, to the
103 citizens of West Virginia;

104 (3) Benchmarks in the following areas:

105 (A) Enrollment;

106 (B) Retention and graduation;

107 (C) Capital improvements and building renovations/
108 demolitions;

109 (D) Athletics, auxiliaries, and other nonacademic units;

- 110 (E) Fundraising and alumni development;
- 111 (F) Academic restructure and program development;
- 112 (G) Marketing and outreach;
- 113 (H) Remedial and developmental education;
- 114 (I) Innovative academic initiatives that can be piloted at
115 WVU-Tech with the opportunity for diffusion across the
116 systems of higher education;
- 117 (J) Transfer and articulation partnerships with other
118 institutions in the state systems of higher education; and
- 119 (K) Grants, contracts, and externally sponsored research;
120 and
- 121 (4) A process whereby WVU-Tech may request and
122 receive moneys from the pool of appropriated funds.
- 123 (f) The findings, conclusions and recommendations of the
124 study, together with the revitalization plan for
125 implementation, shall be reported to the commission and the
126 governing board by September 1, 2011. The revitalization
127 plan shall be delivered to LOCEA no later than September 1,
128 2011, and LOCEA shall consider the proposed plan and
129 approve or disapprove by September 30, 2011.

**§18B-1E-4. Plan implementation; legislative intent; oversight;
reporting.**

- 1 (a) The legislative findings set forth in section two of this
2 article demonstrate the unique historical role that WVU-Tech
3 has played as a vital component of the state's higher
4 education system. In order for the institution to move
5 forward and realize its full potential, its future must be

6 supported by a financial commitment from the state.
7 Therefore, as funds are available, it is the intent of the
8 Legislature to make appropriations to the commission to
9 support the revitalization project at WVU-Tech.

10 (b) Appropriated funds may be expended under the
11 direction of the chancellor for the purposes set forth in this
12 article and in the revitalization plan approved by LOCEA.

13 (c) The purposes for which the moneys may be used
14 include, but are not limited to, development costs for new
15 programs, student outreach initiatives, demolition of certain
16 facilities, and renovation of campus infrastructure or other
17 items designed to support existing students and attract new
18 students.

19 (d) By December 1, 2012, and annually thereafter until
20 all appropriated funds have been expended, the chancellor
21 shall report to LOCEA on the allocation of funds.
22 Additionally, the chancellor shall provide regular updates to
23 LOCEA, as necessary or requested, to keep members
24 informed of the progress made in implementing the purposes
25 and intent of this article and the components of the
26 revitalization plan.

27 (e) By May 1, 2014, the commission and governing board
28 shall provide to LOCEA a detailed summary of all
29 revitalization project activities undertaken to date. This
30 report also shall include recommendations for alterations to
31 the revitalization plan and the goals of the revitalization
32 project and may include recommended options for
33 governance changes including independent status for the
34 institution.

CHAPTER 81

**(Com. Sub. for S. B. 484 - By Senators McCabe,
Unger, Foster, Stollings, Wells, Minard, Beach,
and Kessler (Acting President))**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-1F-1, §18B-1F-2, §18B-1F-3, §18B-1F-4, §18B-1F-5, §18B-1F-6, §18B-1F-7, §18B-1F-8 and §18B-1F-9, all relating to powers and duties of the policy commission; authorizing creation of certain corporations; authorizing policy commission to enter into certain agreements and contractual arrangements; terms and conditions; legislative findings, purpose and intent; definitions; establishing essential criteria for certain corporations; specifying corporation membership, organization and financial requirements; providing for appointment of and specifying qualifications for executive director; requiring annual audit of corporation operations; clarifying issues of conflicts of interest; prohibiting waiver of sovereign immunity; clarifying issues of debt obligations; requiring memorandum of agreement on research collaboration and cooperation; specifying parties to agreement and setting forth certain conditions; specifying certain deadlines; and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-1F-1, §18B-1F-2,

§18B-1F-3, §18B-1F-4, §18B-1F-5, §18B-1F-6, §18B-1F-7, §18B-1F-8 and §18B-1F-9, all to read as follows:

**ARTICLE 1F. MANAGEMENT AGREEMENTS FOR THE
HIGHER EDUCATION POLICY
COMMISSION.**

§18B-1F-1. Legislative findings and purpose.

1 (a) The Legislature finds that economic development in
2 West Virginia depends in part on collaborations developed
3 between higher education and businesses and industry,
4 particularly in the advancement of new and emerging
5 technologies. It is in the best interests of the citizens of the
6 state to implement programs which promote this research and
7 contribute to the general economic welfare.

8 (b) The Legislature further finds that the transfer of
9 property to the Commission to establish the West Virginia
10 Education, Research and Technology Park created a new and
11 unprecedented opportunity to promote research and
12 development in the state. An efficiently managed Technology
13 Park will encourage private sector participation in and
14 support for research and economic development and will
15 facilitate collaboration among the commission, the doctoral
16 institutions and their research corporations.

17 (c) It is the responsibility of the commission to ensure
18 that the day to day operations of the Technology Park are
19 carried out effectively and efficiently in order to provide the
20 greatest investment return to the people of West Virginia. To
21 this end the Legislature finds that a mechanism is needed to
22 simplify and expedite property management and purchasing
23 of equipment, material and personal services.

24 (d) Therefore, the purpose of this article is to provide the
25 commission with the authority necessary to carry out its

26 responsibilities related to the operation of the Technology
27 Park. The commission is authorized to enter into agreements
28 and other contractual relationships with an affiliated
29 corporation in order to achieve maximum efficiency in
30 managing the Technology Park.

§18B-1F-2. Definitions.

1 The following words used in this article have the
2 meanings ascribed to them in this section unless the context
3 clearly indicates a different meaning:

4 (a) “Affiliated corporation” or “corporation” means a
5 corporation which meets the essential criteria prescribed in
6 section three of this article and whose purpose is to provide
7 management services to the commission in carrying out the
8 day to day operations of the Technology Park;

9 (b) “Agreement” means an agreement or contractual
10 relationship entered into between the commission and an
11 affiliated corporation pursuant to the provisions of this
12 article;

13 (c) “Board of directors” means the governing body of a
14 corporation created pursuant to section three of this article;

15 (d) “Doctoral institution” means Marshall University or
16 West Virginia University;

17 (e) “Executive director” means the chief executive officer
18 of an affiliated corporation employed pursuant to section five
19 of this article;

20 (f) “Potential membership” means the total number of
21 members who comprise the board of directors when all
22 membership seats are filled;

23 (g) "Private sector member" means a director of an
24 affiliated corporation who is not an employee of the
25 commission nor of any entity bearing a direct or indirect
26 relationship to the commission;

27 (h) "Research corporation" means a corporation
28 established with respect to Marshall University or West
29 Virginia University pursuant to section three, article twelve
30 of this chapter; and

31 (i) "Technology Park" means the state-owned West
32 Virginia Education, Research and Technology Park affiliated
33 with the commission.

**§18B-1F-3. Commission authorized to contract with
corporation; corporation to meet essential
criteria; corporation membership and
organization; financial requirements.**

1 (a) The commission is authorized to enter into
2 agreements and any other contractual relationships with an
3 affiliated corporation formed as set forth in this article.

4 (b) The affiliated corporation shall meet the following
5 essential criteria:

6 (1) *Corporation status.* -- The corporation is organized as
7 a non-profit, non-stock corporation under the general
8 corporation laws of the state exclusively for charitable,
9 educational or scientific purposes within the meaning of
10 section 501(c) of the Internal Revenue Code of 1986, as
11 amended.

12 (2) *Corporation membership, meetings, officers.* --

13 (A) Members of the board of directors of the affiliated
14 corporation serve terms as prescribed in the bylaws of the

15 corporation and are selected by the commission in
16 consultation with the chancellor. The commission shall make
17 all appointments to the board of directors by majority vote of
18 its members and shall include the individual votes as a part
19 of the minute record.

20 (B) Private sector members shall constitute a majority of
21 the potential membership of the board of directors.
22 Vacancies shall be filled in such a way that the majority
23 status of private sector membership is maintained.

24 (C) By July 1, 2011, and at least biennially thereafter, the
25 board of directors shall elect a chair from among its
26 members.

**§18B-1F-4. Powers and duties of board of directors and
corporation.**

1 (a) The primary responsibility of the corporation is to
2 manage the day to day operations of the Technology Park
3 through collaboration agreements with the commission. To
4 that end, the board of directors has the following powers and
5 duties:

6 (1) To employ an executive director subject to the
7 provisions of section five of this article;

8 (2) To approve employment of other staff recommended
9 by the executive director as being necessary and appropriate
10 to carry out the purposes of this article and subject to
11 agreements with the commission;

12 (3) To serve as fiscal agent and provide additional
13 services, including, but not limited to, property management,
14 human resources management, and purchasing;

15 (4) To meet as a governing body. A corporation created
16 under this article is exempt from the provisions of section

17 three, article nine-a, chapter six of this code and from the
18 provisions of article one, chapter twenty-nine-b of this code;

19 (5) To receive, purchase, hold, lease, use, sell and dispose
20 of real and personal property of all classes, subject to the
21 provisions of subdivision (8) of this subsection and section
22 eight of this article;

23 (6) To receive from any source whatsoever grants to be
24 expended in accomplishing the objectives of this article;

25 (7) To receive from any source whatsoever aid or
26 contributions of money, property or other things of value to
27 be held, used and applied only for the purposes for which the
28 aid or contributions may be made;

29 (8) To accept and expend any gift, grant, contribution,
30 bequest, endowment or other money for the purposes of this
31 article. Any transfer of endowment or other assets by the
32 commission to the corporation or by the corporation to the
33 commission for management shall be formalized in a
34 memorandum of agreement to assure, at a minimum, that any
35 restrictions governing the future disposition of funds are
36 preserved. The commission may not transfer ownership of
37 the Technology Park property to the corporation;

38 (9) To make, amend and repeal bylaws, rules and its
39 governing documents consistent with the provisions of this
40 article to effectuate the purpose and scope of the corporation;

41 (10) To alter the purpose or scope of the corporation; and

42 (11) To delegate the exercise of any of its powers except
43 for the power to approve budgets to the executive director,
44 subject to the directions and limitations contained in its
45 governing documents.

46 (b) In addition to the powers and duties provided for in
47 this section and any other powers and duties that may be
48 assigned to it by law or agreement, the corporation has other
49 powers and duties necessary to accomplish the objectives of
50 this article or as provided by law.

§18B-1F-5. Appointment of executive director; qualifications.

1 (a) The commission shall set the qualifications for the
2 position of executive director and shall conduct a thorough
3 search for qualified candidates. A qualified candidate is one
4 who meets at least the following criteria:

5 (1) Possesses a broad understanding of the relationship
6 between public and private sector research and the need for
7 cooperation and collaboration among the commission and the
8 research corporations;

9 (2) Holds at least a bachelor's degree in a field related to
10 the duties and responsibilities of the position of executive
11 director;

12 (3) Demonstrates strong communication skills and the
13 ability to work with all types of businesses and industry,
14 government agencies and higher education institutions; and

15 (4) Possesses other skills, qualifications or attributes as
16 the commission considers appropriate or desirable.

17 (b) The commission shall select the executive director for
18 the corporation and may not delegate this duty to the
19 chancellor. The executive director may have dual
20 appointment with the commission, but may not be a
21 corporation director.

22 (1) The commission shall appoint the executive director
23 by majority vote of its members and shall include the vote as
24 a part of the minute record.

25 (2) The executive director shall inform the board of
26 directors and the commission annually of his or her
27 employment status with any other institution, agency or
28 organization.

29 (c) The day to day operations of the corporation are under
30 the control and supervision of the executive director. With
31 the approval of the board of directors the executive director
32 may employ staff as necessary to carry out the corporation's
33 purposes as set forth in this article.

§18B-1F-6. Agreements; required provisions.

1 (a) The commission may enter into agreements or other
2 contractual relationships with a corporation that meets the
3 conditions set forth in section three of this article. Any
4 agreement shall specify that the corporation is accountable to
5 the commission for the efficient operations of the Technology
6 Park.

7 (b) On the effective date of the agreement, the
8 corporation becomes the fiscal agent for operations of the
9 Technology Park on behalf of the commission pursuant to
10 terms of the agreement.

11 (c) If an agreement is terminated, the funds, contributions
12 or grants paid or held by the corporation and not encumbered
13 or committed prior to termination shall be distributed as
14 provided for in the agreement.

15 (d) If made part of the agreement, the corporation may
16 use services of both corporation employees and personnel of
17 the commission. The corporation may pay the costs incurred
18 by the commission, including personnel funded on grants and
19 contracts, fringe benefits of personnel funded on grants and
20 contracts, administrative support costs and other costs which
21 may require reimbursement. The corporation may include as

22 costs any applicable overhead and fringe benefit assessments
23 necessary to recover the costs expended by the commission,
24 pursuant to the terms of the agreement, and the commission
25 may be reimbursed for expenses incurred by it pursuant to
26 the agreement.

§18B-1F-7. Audits required; financial reports; conflicts of interest.

1 (a) The financial statements of the corporation shall be
2 audited annually by an independent certified public
3 accountant or firm. Within thirty days of completion, the
4 financial audit report shall be presented to the corporation's
5 board of directors for approval, after which a copy of the
6 financial audit and required statements shall be submitted to
7 the commission.

8 (b) Notwithstanding any other provision of this code to
9 the contrary, any officer or employee of the commission, who
10 is not the executive director of the corporation, may hold an
11 appointment as a member and as an officer of the corporation
12 board of directors.

§18B-1F-8. No waiver of sovereign immunity; not obligation of the state.

1 (a) Nothing contained in this article waives or abrogates
2 in any way the sovereign immunity of the state or deprives
3 the commission or any officer or employee of the
4 commission of sovereign immunity.

5 (b) Obligations of the board of directors or the
6 corporation do not constitute debts or obligations of the
7 commission or the state.

§18B-1F-9. Legislative findings and intent; memorandum of agreement required; terms and conditions; reports.

1 (a) The Legislature finds that the Technology Park is a
2 diversified, multi-tenant research, development and
3 commercialization park focused on energy, chemicals and
4 other sciences and technologies for the advancement of
5 education and economic development in West Virginia. The
6 areas of primary research and development include energy,
7 chemicals and materials, and biotechnology. It is the intent
8 of the Legislature to provide the commission with the tools
9 needed to manage the Technology Park and facilitate the
10 translation of state investment dollars in higher education and
11 research into business and economic growth that will provide
12 tangible benefits for the citizens of the state.

13 (b) To achieve the goals set forth in this section, it is
14 essential that the commission include in its research and
15 development efforts the talents and expertise available at the
16 doctoral institutions and their research corporations. Therefore,
17 by July 1, 2011, the commission shall enter into a memorandum
18 of agreement with the research corporations to delineate the role
19 each party will play in furthering the goals of research and
20 economic development as set forth in this article. The
21 agreement shall focus on collaboration and cooperation among
22 the commission and the two research corporations.

23 (1) The agreement is not effective until all parties have
24 agreed to the included terms and conditions.

25 (2) The commission shall file a report, including a copy
26 of the completed agreement and any relevant documents,
27 with the Joint Committee on Government and Finance and
28 the Legislative Oversight Commission on Education
29 Accountability by July 15, 2011.

30 (3) The agreement may be amended by mutual consent of
31 the parties. Within fifteen days of the date a new agreement
32 is signed, the commission shall file a report as provided in
33 subdivision (2) of this subsection.

CHAPTER 82

**(Com. Sub. for S. B. 200 - By Senators Kessler
(Acting President), McCabe, Stollings, Plymale,
Prezioso, Yost and Klempa)**

[Passed February 8, 2011; in effect from passage.]
[Approved by the Governor on March 1, 2011.]

AN ACT to amend and reenact §18B-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-2A-1 of said code, all relating to correcting names of certain state institutions of higher education.

Be it enacted by the Legislature of West Virginia:

That §18B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18B-2A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GOVERNANCE.

***§18B-1-2. Definitions.**

1 The following words when used in this chapter and
2 chapter eighteen-c of this code have the meanings ascribed to
3 them unless the context clearly indicates a different meaning:

4 (a) “Governing boards” or “boards” means the
5 institutional boards of governors created pursuant to section
6 one, article two-a of this chapter;

***CLERK’S NOTE:** This section was also amended by Com. Sub. for S. B. 330 (Chapter 79) which passed subsequent to this act.

7 (b) “Free-standing community and technical colleges”
8 means Southern West Virginia Community and Technical
9 College, West Virginia Northern Community and Technical
10 College, and Eastern West Virginia Community and
11 Technical College, which may not be operated as branches or
12 off-campus locations of any other state institution of higher
13 education;

14 (c) “Community and technical college”, in the singular or
15 plural, means the free-standing community and technical
16 colleges and other state institutions of higher education which
17 deliver community and technical college education. This
18 definition includes Blue Ridge Community and Technical
19 College, Bridgemont Community and Technical College,
20 Eastern West Virginia Community and Technical College,
21 Kanawha Valley Community and Technical College,
22 Mountwest Community and Technical College, New River
23 Community and Technical College, Pierpont Community and
24 Technical College, Southern West Virginia Community and
25 Technical College, West Virginia Northern Community and
26 Technical College, and West Virginia University at
27 Parkersburg;

28 (d) “Community and technical college education” means
29 the programs, faculty, administration and funding associated
30 with the delivery of community and technical college
31 education programs;

32 (e) “Essential conditions” means those conditions which
33 shall be met by community and technical colleges as
34 provided in section three, article three-c of this chapter;

35 (f) “Higher education institution” means any institution
36 as defined by Sections 401(f), (g) and (h) of the federal
37 Higher Education Facilities Act of 1963, as amended;

38 (g) “Higher Education Policy Commission”, “Policy
39 Commission” or “Commission” means the commission
40 created pursuant to section one, article one-b of this chapter;

41 (h) “Chancellor for Higher Education” means the chief
42 executive officer of the Higher Education Policy Commission
43 employed pursuant to section five, article one-b of this
44 chapter;

45 (i) “Chancellor for Community and Technical College
46 Education” means the chief executive officer of the West
47 Virginia Council for Community and Technical College
48 Education employed pursuant to section three, article two-b
49 of this chapter;

50 (j) “Chancellor” means the Chancellor for Higher
51 Education where the context refers to a function of the
52 Higher Education Policy Commission. “Chancellor” means
53 Chancellor for Community and Technical College Education
54 where the context refers to a function of the West Virginia
55 Council for Community and Technical College Education;

56 (k) “Institutional operating budget” or “operating budget”
57 means for any fiscal year an institution’s total unrestricted
58 education and general funding from all sources in the prior
59 fiscal year, including, but not limited to, tuition and fees and
60 legislative appropriation, and any adjustments to that funding
61 as approved by the commission or council based on
62 comparisons with peer institutions or to reflect consistent
63 components of peer operating budgets;

64 (l) “Community and technical college education
65 program” means any college-level course or program beyond
66 the high school level provided through a public institution of
67 higher education resulting in or which may result in a two-
68 year associate degree award including an associate of arts, an
69 associate of science and an associate of applied science;
70 certificate programs and skill sets; developmental education;

71 continuing education; collegiate credit and noncredit
72 workforce development programs; and transfer and
73 baccalaureate parallel programs. All programs are under the
74 jurisdiction of the council. Any reference to “post-secondary
75 vocational education programs” means community and
76 technical college education programs as defined in this
77 subsection;

78 (m) “Rule” or “rules” means a regulation, standard,
79 policy or interpretation of general application and future
80 effect;

81 (n) “Vice Chancellor for Administration” means the
82 person employed in accordance with section two, article four
83 of this chapter. Any reference in this chapter or chapter
84 eighteen-c of this code to “Senior Administrator” means Vice
85 Chancellor for Administration;

86 (o) “State college” means Bluefield State College,
87 Concord University, Fairmont State University, Glenville
88 State College, Shepherd University, West Liberty University
89 or West Virginia State University;

90 (p) “State institution of higher education” means any
91 university, college or community and technical college under
92 the jurisdiction of a governing board as that term is defined
93 in this section;

94 (q) “Board of visitors” means the advisory board
95 previously appointed for the West Virginia Graduate College
96 and the advisory board previously appointed for West
97 Virginia University Institute of Technology, which provide
98 guidance to the Marshall University Graduate College and
99 West Virginia University Institute of Technology,
100 respectively;

101 (r) “Institutional compact” means the compact between
102 the Commission or Council and a state institution of higher

103 education under its jurisdiction, as described in section six,
104 article one-d of this chapter;

105 (s) “Peer institutions”, “peer group” or “peers” means
106 public institutions of higher education used for comparison
107 purposes and selected by the commission pursuant to section
108 three, article one-a of this chapter;

109 (t) “Administratively linked community and technical
110 college” means a state institution of higher education
111 delivering community and technical college education and
112 programs which has maintained a contractual agreement to
113 receive essential services from another accredited state
114 institution of higher education prior to July 1, 2008;

115 (u) “Sponsoring institution” means a state institution of
116 higher education that maintained an administrative link to a
117 community and technical college providing essential services
118 prior to July 1, 2008. This definition includes institutions
119 whose governing boards had under their jurisdiction a
120 community and technical college, regional campus or a
121 division delivering community and technical college
122 education and programs;

123 (v) “Collaboration” means entering into an agreement
124 with one or more providers of education services in order to
125 enhance the scope, quality or efficiency of education
126 services;

127 (w) “Broker” or “brokering” means serving as an agent
128 on behalf of students, employers, communities or
129 responsibility areas to obtain education services not offered
130 at that institution. These services include courses, degree
131 programs or other services contracted through an agreement
132 with a provider of education services either in-state or out-of-
133 state;

134 (x) “Council” means the West Virginia Council for
135 Community and Technical College Education created
136 pursuant to article two-b of this chapter;

137 (y) “West Virginia Consortium for Undergraduate
138 Research and Engineering” or “West Virginia CURE” means
139 the collaborative planning group established pursuant to
140 article one-c of this chapter;

141 (z) “Advanced technology center” means a facility
142 established under the direction of an independent community
143 and technical college for the purpose of implementing and
144 delivering education and training programs for high-skill,
145 high-performance Twenty-first Century workplaces;

146 (aa) “Statewide network of independently accredited
147 community and technical colleges” or “community and
148 technical college network” means the state institutions of
149 higher education under the jurisdiction of the West Virginia
150 Council for Community and Technical College Education
151 which are independently accredited, each governed by its
152 own independent governing board, and each having a core
153 mission of providing affordable access to and delivering high
154 quality community and technical education in every region of
155 the state;

156 (bb) “Independent community and technical college”
157 means a state institution of higher education under the
158 jurisdiction of the council which is independently accredited,
159 is governed by its own independent governing board, and
160 may not be operated as a branch or off-campus location of
161 any other state institution of higher education. This
162 definition includes Blue Ridge Community and Technical
163 College, Bridgemont Community and Technical College,
164 Eastern West Virginia Community and Technical College,
165 Kanawha Valley Community and Technical College,
166 Mountwest Community and Technical College, New River

167 Community and Technical College, Pierpont Community and
168 Technical College, Southern West Virginia Community and
169 Technical College, West Virginia Northern Community and
170 Technical College, and West Virginia University at
171 Parkersburg; and

172 (cc) “Dual credit course” or “dual enrollment course”
173 means a credit-bearing college-level course offered in a high
174 school by a state institution of higher education for high
175 school students in which the students are concurrently
176 enrolled and receiving credit at the secondary level.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) *Findings.* --

2 The Legislature finds that the State of West Virginia is
3 served best when the membership of each governing board
4 includes the following:

5 (1) The academic expertise and institutional experience
6 of faculty members and a student of the institution governed
7 by the board;

8 (2) The technical or professional expertise and
9 institutional experience of a classified employee of the
10 institution governed by the board;

11 (3) An awareness and understanding of the issues facing
12 the institution governed by the board; and

13 (4) The diverse perspectives that arise from a
14 membership that is balanced in terms of gender and varied in
15 terms of race and ethnic heritage.

16 (b) *Boards of Governors established.* --

17 A Board of Governors is continued at each of the
18 following institutions: Bluefield State College, Blue Ridge
19 Community and Technical College, Bridgemont Community
20 and Technical College, Concord University, Eastern West
21 Virginia Community and Technical College, Fairmont State
22 University, Glenville State College, Kanawha Valley
23 Community and Technical College, Mountwest Community
24 and Technical College, Marshall University, New River
25 Community and Technical College, Pierpont Community and
26 Technical College, Shepherd University, Southern West
27 Virginia Community and Technical College, West Liberty
28 University, West Virginia Northern Community and
29 Technical College, the West Virginia School of Osteopathic
30 Medicine, West Virginia State University, West Virginia
31 University and West Virginia University at Parkersburg.

32 (c) *Board Membership.* --

33 (1) An appointment to fill a vacancy on the board or
34 reappointment of a member who is eligible to serve an
35 additional term is made in accordance with the provisions of
36 this section.

37 (2) The board of governors for Marshall University
38 consists of sixteen persons. The board of governors for West
39 Virginia University consists of seventeen persons. The
40 boards of governors of the other state institutions of higher
41 education consist of twelve persons.

42 (3) Each board of governors includes the following
43 members:

44 (A) A full-time member of the faculty with the rank of
45 instructor or above duly elected by the faculty of the
46 respective institution;

47 (B) A member of the student body in good academic
48 standing, enrolled for college credit work and duly elected by
49 the student body of the respective institution; and

50 (C) A member from the institutional classified employees
51 duly elected by the classified employees of the respective
52 institution;

53 (4) For the board of governors at Marshall University,
54 thirteen lay members appointed by the Governor, by and with
55 the advice and consent of the Senate, pursuant to this section;

56 (5) For the board of governors at West Virginia
57 University, twelve lay members appointed by the Governor,
58 by and with the advice and consent of the Senate, pursuant to
59 this section, and additionally:

60 (A) The chairperson of the board of visitors of West
61 Virginia University Institute of Technology;

62 (B) A full-time faculty member representing the
63 extension service at the institution or a full-time faculty
64 member representing the health sciences, selected by the
65 faculty senate.

66 (6) For each board of governors of the other state
67 institutions of higher education, nine lay members appointed
68 by the Governor, by and with the advice and consent of the
69 Senate, pursuant to this section.

70 (A) Of the nine members appointed by the Governor, no
71 more than five may be of the same political party. Of the
72 thirteen members appointed by the Governor to the governing
73 board of Marshall University, no more than eight may be of
74 the same political party. Of the twelve members appointed
75 by the Governor to the governing board of West Virginia
76 University, no more than seven may be of the same political
77 party.

78 (B) Of the nine members appointed by the Governor, at
79 least five shall be residents of the state. Of the thirteen
80 members appointed by the Governor to the governing board
81 of Marshall University, at least eight shall be residents of the
82 state. Of the twelve members appointed by the Governor to
83 the governing board of West Virginia University, at least
84 seven shall be residents of the state.

85 (7) In making lay appointments, the Governor shall
86 consider the institutional mission and membership
87 characteristics including the following:

88 (A) The need for individual skills, knowledge and
89 experience relevant to governing the institution;

90 (B) The need for awareness and understanding of
91 institutional problems and priorities, including those related
92 to research, teaching and outreach;

93 (C) The value of gender, racial and ethnic diversity; and

94 (D) The value of achieving balance in gender and
95 diversity in the racial and ethnic characteristics of the lay
96 membership of each board.

97 (d) *Board member terms.* --

98 (1) The student member serves for a term of one year.
99 Each term begins on July 1.

100 (2) The faculty member serves for a term of two years.
101 Each term begins on July 1. Faculty members are eligible to
102 succeed themselves for three additional terms, not to exceed
103 a total of eight consecutive years.

104 (3) The member representing classified employees serves
105 for a term of two years. Each term begins on July 1.
106 Members representing classified employees are eligible to

107 succeed themselves for three additional terms, not to exceed
108 a total of eight consecutive years.

109 (4) The appointed lay citizen members serve terms of up
110 to four years each and are eligible to succeed themselves for
111 no more than one additional term.

112 (5) A vacancy in an unexpired term of a member shall be
113 filled for the unexpired term within thirty days of the
114 occurrence of the vacancy in the same manner as the original
115 appointment or election. Except in the case of a vacancy, all
116 elections are held and all appointments are made no later than
117 June 30 preceding the commencement of the term. Each
118 board of governors shall elect one of its appointed lay
119 members to be chairperson in June of each year. A member
120 may not serve as chairperson for more than four consecutive
121 years.

122 (6) The appointed members of the boards of governors
123 serve staggered terms of up to four years except that four of
124 the initial appointments to the governing boards of
125 community and technical colleges that became independent
126 July 1, 2008, are for terms of two years and five of the initial
127 appointments are for terms of four years.

128 (e) *Board member eligibility, expenses.* --

129 (1) A person is ineligible for appointment to membership
130 on a board of governors of a state institution of higher
131 education under the following conditions:

132 (A) For a baccalaureate institution or university, a person
133 is ineligible for appointment who is an officer, employee or
134 member of any other board of governors; an employee of any
135 institution of higher education; an officer or member of any
136 political party executive committee; the holder of any other
137 public office or public employment under the government of

138 this state or any of its political subdivisions; an employee of
139 any affiliated research corporation created pursuant to article
140 twelve of this chapter; an employee of any affiliated
141 foundation organized and operated in support of one or more
142 state institutions of higher education; or a member of the
143 council or commission. This subsection does not prevent the
144 representative from the faculty, classified employees,
145 students or the superintendent of a county board of education
146 from being members of the governing boards.

147 (B) For a community and technical college, a person is
148 ineligible for appointment who is an officer, employee or
149 member of any other board of governors; a member of a
150 board of visitors of any public institution of higher
151 education; an employee of any institution of higher
152 education; an officer or member of any political party
153 executive committee; the holder of any other public office,
154 other than an elected county office, or public employment,
155 other than employment by the county board of education,
156 under the government of this state or any of its political
157 subdivisions; an employee of any affiliated research
158 corporation created pursuant to article twelve of this
159 chapter; an employee of any affiliated foundation
160 organized and operated in support of one or more state
161 institutions of higher education; or a member of the council
162 or commission. This subsection does not prevent the
163 representative from the faculty, classified employees or
164 students from being members of the governing boards.

165 (2) Before exercising any authority or performing any
166 duties as a member of a governing board, each member shall
167 qualify as such by taking and subscribing to the oath of office
168 prescribed by section five, article IV of the Constitution of
169 West Virginia and the certificate thereof shall be filed with
170 the Secretary of State.

171 (3) A member of a governing board appointed by the
172 Governor may not be removed from office by the Governor
173 except for official misconduct, incompetence, neglect of duty
174 or gross immorality and then only in the manner prescribed
175 by law for the removal of the state elective officers by the
176 Governor.

177 (4) The members of the board of governors serve without
178 compensation, but are reimbursed for all reasonable and
179 necessary expenses actually incurred in the performance of
180 official duties under this article upon presentation of an
181 itemized sworn statement of expenses.

182 (5) The president of the institution shall make available
183 resources of the institution for conducting the business of its
184 board of governors. All expenses incurred by the board of
185 governors and the institution under this section are paid from
186 funds allocated to the institution for that purpose.



CHAPTER 83

**(S. B. 538 - By Senators Plymale,
Jenkins, Foster and Browning)**

[Passed March 9, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2011.]

AN ACT to amend and reenact §18B-3D-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-3D-6, all relating to establishing the Learn and Earn Cooperative Education Program; authorizing expenditure of certain funds; defining eligibility to receive funding; setting terms for required cash match; and requiring legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §18B-3D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-3D-6, all to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-5. Legislative and emergency rules.

1 (a) The council shall propose a legislative rule pursuant
2 to article three-a, chapter twenty-nine-a of this code to
3 implement the provisions of this article and shall file the rule
4 with the Legislative Oversight Commission on Education
5 Accountability no later than October 1, 2011.

6 (b) The Legislature finds that an emergency exists and,
7 therefore, the council shall propose an emergency rule to
8 implement the provisions of this article in accordance with
9 section six, article one of this chapter and article three-a,
10 chapter twenty-nine-a of this code by October 1, 2011.

11 (c) Any rule promulgated by the council pursuant to
12 previous enactments of this section and in effect on the
13 effective date of the amendment and reenactment of this
14 section in the year 2011 remains in effect until amended,
15 modified, repealed or replaced by the council.

§18B-3D-6. Learn and Earn Cooperative Education Program established.

1 (a) *Legislative findings.*

2 (1) The Legislature finds that many West Virginians,
3 particularly young adults, cannot enroll full-time in a
4 community and technical college technical program because

5 circumstances require them to maintain full-time
6 employment. It is critically important that technical programs
7 leading to high-wage occupations be more accessible and
8 affordable for all West Virginians.

9 (2) The Legislature further finds that cooperative
10 education programs are successful in providing access to
11 these technical programs while providing students enrolled
12 full-time in a community and technical college with the
13 financial benefits they need to continue their education.
14 These cooperative education programs provide opportunities
15 for students to work with West Virginia companies while in
16 college, thus increasing the likelihood that they will complete
17 the program, find gainful employment and choose to remain
18 in West Virginia upon graduation. They provide students
19 with hands-on, real world work experience with a salary
20 while they complete a technical program of study and, at the
21 same time, provide employers with a cost-effective tool for
22 recruiting and training.

23 (b) The purpose of this section is to establish a
24 cooperative education program, under the jurisdiction of the
25 council, as a component of the Workforce Development
26 Initiative Program established pursuant to this article. The
27 program shall be known and may be cited as the “Learn and
28 Earn Program”.

29 (c) The program requires a dollar-for-dollar cash match
30 from participating employers or groups of employers from
31 which the student receives a salary from the employer or
32 employers while participating in the program. Participants
33 may not substitute a match in-kind for the cash match
34 required by this section.

35 (d) An institution is eligible to apply for a program grant
36 in cooperation with one or more employer partners if it meets
37 the definition of a community and technical college provided

38 in section two, article one of this chapter. The council shall
39 define the application process in the rules required in section
40 five of this article.

41 (e) The council may expend funds available through the
42 Workforce Development Initiative program to implement the
43 provisions of this section.



CHAPTER 84

**(S. B. 375 - By Senators Wells,
Plymale, Chafin and Stollings)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18B-4-7 of the Code of West Virginia, 1931, as amended, relating to authority of institutions of higher education to confer degrees; applicability of provisions; minimum standards; requiring collection and dissemination of certain information; authorizing certain reviews and audits; and providing for revocation of degree-granting authority under certain conditions.

Be it enacted by the Legislature of West Virginia:

That §18B-4-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.**§18B-4-7. Accreditation of institutions of higher education; standards for degrees.**

1 (a) The council shall make rules for the accreditation of
2 community and technical colleges in this state and shall
3 determine the minimum standards for conferring degrees.
4 The commission shall make rules for the accreditation of
5 colleges and universities in this state except the governing
6 boards of Marshall University and West Virginia University
7 shall make rules for their respective institutions, and each
8 shall determine the minimum standards for conferring
9 degrees. The governing boards of Marshall University and
10 West Virginia University shall promulgate rules pursuant to
11 the provisions of section six, article one of this chapter for the
12 accreditation of their respective institutions.

13 (b) An institution of higher education may not confer a
14 degree on any basis of work or merit below the minimum
15 standards prescribed by the council or commission.

16 (c) With the approval of the commission and subject to
17 subsections (e), (f) and (g) of this section, governing boards
18 of institutions which currently offer substantial undergraduate
19 course offerings and a master's degree in a discipline are
20 authorized to grant baccalaureate degrees in that discipline.

21 (d) Except as otherwise provided in this section, a charter
22 or other instrument containing the right to confer degrees of
23 higher education status may not be granted by the State of
24 West Virginia to an institution, association or organization
25 within the state, nor may a degree be awarded, until the
26 condition of conferring the degree first has been approved in
27 writing by the council or commission, as appropriate, or by
28 the institution's governing board in the case of Marshall
29 University or West Virginia University.

30 (e) To retain the authority to confer degrees pursuant to
31 this section, each institution shall provide annually to the

32 commission or council, as requested, all information the
33 commission or council considers necessary to assess the
34 performance of the institution and to determine whether the
35 institution continues to meet the minimum standards for
36 conferring degrees. This information includes, but is not
37 limited to, the following data:

38 (1) All information current and future federal or state
39 laws and regulations require the institution to report to the
40 public, to students, to employees or to federal or state
41 agencies;

42 (2) Other consumer information the commission or
43 council considers necessary, including, but not limited to,
44 graduation and retention rates, transfers, post-graduation
45 placements, loan defaults and numbers and types of student
46 complaints;

47 (3) A detailed explanation of financial operations
48 including, but not limited to, policies, formulas and
49 procedures related to calculation, payment and refund for all
50 tuition and fees; and

51 (4) An assessment of the adequacy of the institution's
52 curriculum, personnel, facilities, materials and equipment to
53 meet the minimum standards for conferring degrees.

54 (f) The commission and council may conduct on-site
55 reviews to evaluate an institution's academic standards, may
56 conduct financial audits, or may require the institution to
57 perform these audits and provide detailed data to the
58 commission or council.

59 (g) The commission or council shall revoke an
60 institution's authority to confer degrees when the institution's
61 governing body, chief executive officer, or both, have done
62 any one or more of the following:

63 (1) Failed to maintain the minimum standards for
64 conferring degrees;

65 (2) Refused or willfully failed to provide information to
66 the commission or council pursuant to this subsection in a
67 manner and within a reasonable time frame as established by
68 the commission or council, as appropriate; or

69 (3) Willfully provided false, misleading or incomplete
70 information to the commission or council.

71 (h) The commission and council each shall compile the
72 information collected pursuant to subdivisions (e), (f) and (g)
73 of this section and submit a report on the information to the
74 Legislative Oversight Commission on Education
75 Accountability annually beginning December 1, 2012. The
76 commission and council each shall make the information and
77 report available to the public in a form and manner that is
78 accessible to the general public, including, but not limited to,
79 posting on its website.

CHAPTER 85

(S. B. 514 - By Senators Plymale and Miller)

[Passed March 10, 2011; in effect from passage.]

[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to higher education; legislative rules; and authorizing a rule for the Higher Education Policy Commission regarding authorization of degree-granting institutions.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

1 (a) The legislative rule filed in the State Register on
2 October 15, 2004, relating to the Higher Education Policy
3 Commission (Underwood-Smith Teacher Scholarship
4 Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 15, 2004, relating to the Higher Education Policy
7 Commission (West Virginia Engineering, Science and
8 Technology Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 15, 2004, relating to the Higher Education Policy
11 Commission (Medical Education Fee and Medical Student
12 Loan Program rule) is authorized.

13 (d) The legislative rule filed in the State Register on
14 October 27, 2005, relating to the Higher Education Policy
15 Commission (Authorization of degree-granting institutions)
16 is authorized.

17 (e) The legislative rule filed in the State Register on
18 August 23, 2006, relating to the Higher Education Policy
19 Commission (West Virginia Higher Education Grant
20 Program) is authorized.

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE) is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program) is authorized.

28 (h) The legislative rule filed in the State Register on
29 January 8, 2009, relating to the Higher Education Policy
30 Commission (Guidelines for Governing Boards in Employing
31 and Evaluating Presidents) is authorized.

32 (i) The legislative rule filed in the State Register on
33 September 10, 2008, relating to the Higher Education Policy
34 Commission (Medical Student Loan Program) is authorized,
35 with the following amendment:

36 On page two, subsection 5.1, following the words
37 “financial aid office” by inserting a new subdivision 5.1.3 to
38 read as follows: “United States citizenship or legal immigrant
39 status while actively pursuing United States citizenship.”

40 (j) The legislative rule filed in the State Register on
41 December 1, 2008, relating to the Higher Education Policy
42 Commission (West Virginia Higher Education Grant
43 Program) is authorized.

44 (k) The legislative rule filed in the State Register on
45 January 26, 2009, relating to the Higher Education Policy
46 Commission (Accountability System) is authorized.

47 (l) The legislative rule filed in the State Register on May
48 20, 2009, relating to the Higher Education Policy
49 Commission (Energy and Water Savings Revolving Loan
50 Fund Program) is authorized.

51 (m) The legislative rule filed in the State Register on
52 January 27, 2010, relating to the Higher Education Policy
53 Commission (Providing Real Opportunities for Maximizing
54 In-state Student Excellence - PROMISE) is authorized.

55 (n) The legislative rule filed in the State Register on
56 December 8, 2010, relating to the Higher Education Policy
57 Commission (Authorization of Degree Granting Institutions)
58 is authorized, with the following amendment:

59 On page twenty-eight, subsection 9.1.b, following the
60 words “Good cause shall consist of” by inserting the words
61 “any one or more of the following”.

CHAPTER 86

**(S. B. 239 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18B-18A-9 of the Code of West Virginia, 1931, as amended, relating to higher education-directed research endowments; extending the date upon which moneys must be deposited into research endowments operated by participating institutions; and altering the time period for reallocation of matching moneys.

Be it enacted by the Legislature of West Virginia:

That §18B-18A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18A. DIRECTED RESEARCH ENDOWMENTS.**§18B-18A-9. Reallocation of matching moneys.**

1 (a) No later than seven years from the effective date of
2 this article, each participating institution shall have deposited
3 into its research endowments an amount of qualified
4 donations equal to or greater than the total amount of moneys
5 allocated for distribution to the institution pursuant to the
6 provisions of subsection (c), section three of this article.

7 (1) If one of the participating institutions fails to have
8 deposited into its research endowments the requisite amount
9 of qualified donations by the end of this seven-year period,
10 then any portion of the moneys allocated to the institution
11 that has not been distributed shall be reallocated for
12 distribution to the other participating institution pursuant to
13 the terms of this article.

14 (2) To be eligible to receive a distribution of reallocated
15 moneys pursuant to this subsection, the other participating
16 institution shall have qualified donations in excess of the
17 amount required by subsection (a) of this section deposited
18 into its research endowment(s) in an amount equal to or
19 greater than the amount of reallocated moneys.

20 (3) If the other participating institution does not have
21 excess qualified donations on deposit, the reallocated moneys
22 shall be made available for distribution by the commission to
23 state colleges in accordance with the provisions of section ten
24 of this article.

25 (b) If any pledge previously used by a participating
26 institution to obtain a distribution of matching moneys from
27 the trust fund has not been paid in full within seven years
28 from the effective date of this article, then the institution shall
29 return the unmatched portion of state moneys to the trust
30 fund. These moneys shall be reallocated for distribution to
31 the other participating institution or to the state colleges
32 pursuant to the terms of this section and section ten of this
33 article as applicable.

34 (c) If both participating institutions fail to have deposited
35 into their respective research endowments the requisite
36 amount of qualified donations within seven years from the
37 effective date of this article, then any moneys remaining in
38 the trust fund that have not been distributed shall be made
39 available for distribution by the commission to state colleges
40 in accordance with the provisions of this article.

CHAPTER 87

**(Com. Sub. for S. B. 488 - By Senators
Stollings, Foster, Hall, Wills, Snyder, Kessler
(Acting President), Jenkins, Plymale and Miller)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to repeal §16-3C-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-3C-1, §16-3C-2 and §16-3C-3 of said code, all relating to HIV testing generally; repealing the authority of the Department of Corrections to conduct AIDS-related study; providing for AIDS-related testing and confidentiality of records; providing definitions; providing who may request testing; providing when testing may be mandated; providing for confidentiality of records; providing enforcement mechanism for orders of the Commissioner of the Bureau of Public Health; eliminating requirements for counseling in certain circumstances; eliminating requirement for information regarding HIV and AIDS be provided to persons applying for marriage licenses; and providing when disclosure is permitted.

Be it enacted by the Legislature of West Virginia:

That §16-3C-7 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-3C-1, §16-3C-2 and §16-3C-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency syndrome.

3 (b) "Bureau" means the Bureau for Public Health.

4 (c) "Commissioner" means the commissioner of the
5 Bureau for Public Health.

6 (d) "Convicted" includes pleas of guilty and pleas of nolo
7 contendere accepted by the court having jurisdiction of the
8 criminal prosecution, a finding of guilty following a jury trial
9 or a trial to a court and an adjudicated juvenile offender as
10 defined in sections two and four, article one, chapter forty-
11 nine of this code.

12 (e) "Department" means the State Department of Health
13 and Human Resources.

14 (f) "Funeral director" has the same meaning ascribed to
15 such term in section three, article six, chapter thirty of this
16 code.

17 (g) "Funeral establishment" has the same meaning
18 ascribed to that term in section three, article six, chapter
19 thirty of this code.

20 (h) “HIV” means the human immunodeficiency virus
21 identified as the causative agent of AIDS.

22 (i) “HIV-related test” means a test for the HIV antibody
23 or antigen or any future valid test approved by the bureau, the
24 federal drug administration or the Centers for Disease
25 Control and Prevention.

26 (j) “Health facility” means a hospital, nursing home,
27 physician’s office, clinic, blood bank, blood center, sperm
28 bank, laboratory or other health care institution.

29 (k) “Health care provider” means any physician, dentist,
30 nurse, paramedic, psychologist or other person providing
31 medical, dental, nursing, psychological or other health care
32 services of any kind.

33 (l) “Health Information Exchange” means the electronic
34 movement of health-related information in accord with law
35 and nationally recognized standards.

36 (m) “High risk behavior” means behavior by a person
37 including, but not limited to: (i) Unprotected sex with a
38 person who is living with HIV; (ii) unprotected sex in
39 exchange for money or drugs; (iii) unprotected sex with
40 multiple partners; (iv) anonymous unprotected sex; (v) or
41 needle sharing; (vi) diagnosis of a sexually transmitted
42 disease; or (vii) unprotected sex or sharing injecting
43 equipment in a high HIV prevalence setting or with a person
44 who is living with HIV.

45 (n) “Medical or emergency responders” means paid or
46 volunteer firefighters, law-enforcement officers, emergency
47 medical technicians, paramedics, or other emergency service
48 personnel, providers or entities acting within the usual course
49 of their duties; good samaritans and other nonmedical and
50 nonemergency personnel providing assistance in

51 emergencies; funeral directors; health care providers;
52 commissioner of the Bureau for Public Health; and all
53 employees thereof and volunteers associated therewith.

54 (o) "Patient" or "test subject" or "subject of the test"
55 means the person upon whom a HIV test is performed, or the
56 person who has legal authority to make health care decisions
57 for the test subject.

58 (p) "Permitted purpose" is a disclosure permitted by the
59 Health Insurance Portability and Accountability Act of 1996
60 as amended, or a disclosure consented to or authorized by a
61 patient or test subject.

62 (q) "Person" includes any natural person, partnership,
63 association, joint venture, trust, public or private corporation
64 or health facility.

65 (r) "Release of test results" means a permitted or
66 authorized disclosure of HIV-related test results.

67 (s) "Significant exposure" means:

68 (1) Exposure to blood or body fluids through needlestick,
69 instruments, sharps, surgery or traumatic events; or

70 (2) Exposure of mucous membranes to visible blood or
71 body fluids, to which universal precautions apply according
72 to the national Centers for Disease Control and Prevention,
73 and laboratory specimens that contain HIV (e.g. suspensions
74 of concentrated virus); or

75 (3) Exposure of skin to visible blood or body fluids, when
76 the exposed skin is chapped, abraded or afflicted with
77 dermatitis or the contact is prolonged or involving an
78 extensive area.

79 (t) “Source patient” means any person whose body fluids
80 have been the source of a significant exposure to a medical
81 or emergency responder.

82 (u) “Targeted testing” means performing an HIV-related
83 test for sub-populations at higher risk, typically defined on
84 the basis of behavior, clinical or demographic characteristics.

85 (v) “Victim” means the person or persons to whom
86 transmission of bodily fluids from the perpetrator of the
87 crimes of sexual abuse, sexual assault, incest or sexual
88 molestation occurred or was likely to have occurred in the
89 commission of such crimes.

§16-3C-2. Testing.

1 (a) HIV-related testing on a voluntary basis should be
2 recommended by any healthcare provider in a health facility
3 as part of a routine screening for treatable conditions and as
4 part of routine prenatal and perinatal care. A physician,
5 dentist, nurse practitioner, nurse midwife, physician assistant
6 or the commissioner may also request targeted testing for any
7 of the following:

8 (1) When there is cause to believe that the test could be
9 positive. Persons who engage in high risk behavior should be
10 encouraged to be screened for HIV at least annually;

11 (2) When there is cause to believe that the test could
12 provide information important in the care of the patient; or

13 (3) When there is cause to believe that the results of HIV-
14 testing of samples of blood or body fluids from a source
15 patient could provide information important in the care of
16 medical or emergency responders or other persons identified
17 in regulations proposed by the department for approval by the
18 Legislature in accordance with the provisions of article three,

19 chapter twenty-nine-a of this code: *Provided*, That the source
20 patient whose blood or body fluids is being tested pursuant to
21 this section must have come into contact with a medical or
22 emergency responder or other person in such a way that a
23 significant exposure has occurred;

24 (4) When there is no record of any HIV-related testing
25 during pregnancy and the woman presents for labor and
26 delivery.

27 (b) A patient voluntarily consents to the test as follows:

28 (1) The patient is informed either orally or in writing that
29 HIV-related testing will be performed as part of his or her
30 routine care, that HIV-related testing is voluntary and that the
31 patient may decline HIV-related testing (opt-out); or

32 (2) The patient is informed that the patient's general
33 consent for medical care includes consent for HIV-related
34 testing.

35 (c) A patient refuses to consent to the test if a patient
36 opts-out of HIV-related testing, the patient is informed when
37 the health care provider in the provider's professional opinion
38 believes HIV-related testing is recommended, and that HIV-
39 related testing may be obtained anonymously at a local or
40 county health department.

41 (d) Any person seeking an HIV-related test in a local or
42 county health department or other HIV test setting provided
43 by the commissioner who wishes to remain anonymous has
44 the right to do so, and to be provided written informed
45 consent through use of a coded system with no linking of
46 individual identity to the test request or results.

47 (e) No option to opt-out of HIV-related testing is required
48 and the provisions of subsection (a) and (b) of this section do
49 not apply for the following:

50 (1) A health care provider or health facility performing an
51 HIV-related test on the donor or recipient when the health
52 care provider or health facility procures, processes,
53 distributes or uses a human body part (including tissue and
54 blood or blood products) donated for a purpose specified
55 under the uniform anatomical gift act, or for transplant
56 recipients, or semen provided for the purpose of artificial
57 insemination and such test is necessary to assure medical
58 acceptability of a recipient or such gift or semen for the
59 purposes intended;

60 (2) The performance of an HIV-related test in
61 documented bona fide medical emergencies, as determined
62 by a treating physician taking into account the nature and
63 extent of the exposure to another person, when the subject of
64 the test is unable or unwilling to grant or withhold consent,
65 and the test results are necessary for medical diagnostic
66 purposes to provide appropriate emergency care or treatment
67 to a medical or emergency responder, or any other person
68 who has come into contact with a source patient in such a
69 way that a significant exposure necessitates HIV-testing or to
70 a source patient who is unable to consent in accordance with
71 rules proposed by the department for approval by the
72 Legislature in accordance with article three, chapter twenty-
73 nine-a of this code: *Provided*, That necessary treatment may
74 not be withheld pending HIV test results: *Provided, however*,
75 That all sampling and HIV-testing of samples of blood and
76 body fluids, without the opportunity for the source patient or
77 patient's representative to opt-out of the testing, shall be
78 through the use of a pseudonym and in accordance with rules
79 proposed by the department for approval by the Legislature
80 in accordance with article three, chapter twenty-nine-a of this
81 code; or

82 (3) The performance of an HIV-related test for the
83 purpose of research if the testing is performed in a manner by
84 which the identity of the test subject is not known and may
85 not be retrieved by the researcher.

86 (f) Mandated testing:

87 (1) The performance of any HIV-related testing that is or
88 becomes mandatory by court order or other legal process
89 described herein does not require consent of the subject but
90 will include counseling.

91 (2) The court having jurisdiction of the criminal
92 prosecution shall order that an HIV-related test be performed
93 on any persons charged with any of the following crimes or
94 offenses:

95 (i) Prostitution; or

96 (ii) Sexual abuse, sexual assault, incest or sexual
97 molestation.

98 (3) HIV-related tests performed on persons charged with
99 prostitution, sexual abuse, sexual assault, incest or sexual
100 molestation shall be confidentially administered by a
101 designee of the bureau or the local or county health
102 department having proper jurisdiction. The commissioner
103 may designate health care providers in regional jail facilities
104 to administer HIV-related tests on such persons if he or she
105 determines it necessary and expedient.

106 (4) When the Commissioner of the Bureau of Public
107 Health knows or has reason to believe, because of medical or
108 epidemiological information, that a person, including, but not
109 limited to, a person such as an IV drug abuser, or a person
110 who may have a sexually transmitted disease, or a person
111 who has sexually molested, abused or assaulted another, has
112 HIV infection and is or may be a danger to the public health,
113 he or she may issue an order to:

114 (i) Require a person to be examined and tested to
115 determine whether the person has HIV infection;

116 (ii) Require a person with HIV infection to report to a
117 qualified physician or health worker for counseling; and

118 (iii) Direct a person with HIV infection to cease and
119 desist from specified conduct which endangers the health of
120 others.

121 (5) If any person violates a cease and desist order issued
122 pursuant to this section and, by virtue of that violation, the
123 person presents a danger to the health of others, the
124 commissioner shall apply to the circuit court of Kanawha
125 County to enforce the cease and desist order by imposing any
126 restrictions upon the person that are necessary to prevent the
127 specific conduct that endangers the health of others.

128 (6) A person convicted of the offenses described in this
129 section shall be required to undergo HIV-related testing and
130 counseling immediately upon conviction and the court having
131 jurisdiction of the criminal prosecution may not release the
132 convicted person from custody and shall revoke any order
133 admitting the defendant to bail until HIV-related testing and
134 counseling have been performed and the result is known.
135 The HIV-related test result obtained from the convicted
136 person is to be transmitted to the court and, after the
137 convicted person is sentenced, made part of the court record.
138 If the convicted person is placed in the custody of the
139 Division of Corrections, the court shall transmit a copy of the
140 convicted person's HIV-related test results to the Division of
141 Corrections. The HIV-related test results shall be closed and
142 confidential and disclosed by the court and the bureau only
143 in accordance with the provisions of section three of this
144 article.

145 (7) The prosecuting attorney shall inform the victim, or
146 parent or guardian of the victim, at the earliest stage of the
147 proceedings of the availability of voluntary HIV-related
148 testing and counseling conducted by the bureau and that his

149 or her best health interest would be served by submitting to
150 HIV-related testing and counseling. HIV-related testing for
151 the victim shall be administered at his or her request on a
152 confidential basis and shall be administered in accordance
153 with the Centers for Disease Control and Prevention
154 guidelines of the United States Public Health Service in effect
155 at the time of such request. The victim who obtains an HIV-
156 related test shall be provided with pre and post-test
157 counseling regarding the nature, reliability and significance
158 of the HIV-related test and the confidential nature of the test.
159 HIV-related testing and counseling conducted pursuant to
160 this subsection shall be performed by the designee of the
161 commissioner of the bureau or by any local or county health
162 department having proper jurisdiction.

163 (8) If a person receives counseling or is tested under this
164 subsection and is found to be HIV infected and the person is
165 not incarcerated, the person shall be referred by the health
166 care provider performing the counseling or testing for
167 appropriate medical care and support services. The local or
168 county health departments or any other agency under this
169 subsection may not be financially responsible for medical
170 care and support services.

171 (9) The commissioner of the bureau or his or her
172 designees may require an HIV test for the protection of a
173 person who was possibly exposed to HIV infected blood or
174 other body fluids as a result of receiving or rendering
175 emergency medical aid or who possibly received such
176 exposure as a funeral director. Results of such a test of the
177 person causing exposure may be used by the requesting
178 physician for the purpose of determining appropriate therapy,
179 counseling and psychological support for the person
180 rendering emergency medical aid including good Samaritans,
181 as well as for the patient, or individual receiving the
182 emergency medical aid.

183 (10) If an HIV-related test required on persons convicted
184 of prostitution, sexual abuse, sexual assault, incest or sexual
185 molestation results in a negative reaction, upon motion of the
186 state, the court having jurisdiction over the criminal
187 prosecution may require the subject of the test to submit to
188 further HIV-related tests performed under the direction of the
189 bureau in accordance with the Centers for Disease Control
190 and Prevention guidelines of the United States Public Health
191 Service in effect at the time of the motion of the state.

192 (11) The costs of mandated testing and counseling
193 provided under this subsection and pre and postconviction
194 HIV-related testing and counseling provided the victim under
195 the direction of the bureau pursuant to this subsection shall be
196 paid by the bureau.

197 (12) The court having jurisdiction of the criminal
198 prosecution shall order a person convicted of prostitution,
199 sexual abuse, sexual assault, incest or sexual molestation to
200 pay restitution to the state for the costs of any HIV-related
201 testing and counseling provided the convicted person and the
202 victim, unless the court has determined the convicted person
203 to be indigent.

204 (13) Any funds recovered by the state as a result of an
205 award of restitution under this subsection shall be paid into
206 the State Treasury to the credit of a special revenue fund to
207 be known as the "HIV-testing fund" which is hereby created.
208 The moneys so credited to the fund may be used solely by the
209 bureau for the purposes of facilitating the performance of
210 HIV-related testing and counseling under the provisions of
211 this article.

212 (g) Nothing in this section is applicable to any insurer
213 regulated under chapter thirty-three of this code: *Provided,*
214 That the commissioner of insurance shall develop standards
215 regarding consent for use by insurers which test for the
216 presence of the HIV antibody.

217 (h) Whenever consent of the subject to the performance
218 of HIV-related testing is required under this article, any such
219 consent obtained, whether orally or in writing, shall be
220 considered to be a valid and informed consent if it is given
221 after compliance with the provisions of subsection (b) of this
222 section.

**§16-3C-3. Confidentiality of records; permitted disclosure; no
duty to notify.**

1 (a) No person may disclose or be compelled to disclose
2 the identity of any person upon whom an HIV-related test is
3 performed, or the results of such a test in a manner which
4 permits identification of the subject of the test, except to the
5 following persons:

6 (1) The subject of the test;

7 (2) The victim of the crimes of sexual abuse, sexual
8 assault, incest or sexual molestation at the request of the
9 victim or the victim's legal guardian, or of the parent or legal
10 guardian of the victim if the victim is a minor where
11 disclosure of the HIV-related test results of the convicted sex
12 offender are requested;

13 (3) Any person who secures a specific release of test
14 results executed by the subject of the test;

15 (4) A funeral director or an authorized agent or employee
16 of a health facility or health care provider if the funeral
17 establishment, health facility or health care provider itself is
18 authorized to obtain the test results, the agent or employee
19 provides patient care or handles or processes specimens of
20 body fluids or tissues and the agent or employee has a need
21 to know that information: *Provided*, That the funeral director,
22 agent or employee shall maintain the confidentiality of this
23 information;

24 (5) Licensed health care providers or appropriate health
25 facility personnel providing care to the subject of the test:
26 *Provided*, That such personnel shall maintain the
27 confidentiality of the test results and may redisclose the
28 results only for a permitted purpose or as permitted by law.
29 The entry on a patient's chart of an HIV-related illness by the
30 attending or other treating physician or other health care
31 provider shall not constitute a breach of confidentiality
32 requirements imposed by this article;

33 (6) The Bureau or the Centers for Disease Control and
34 Prevention of the United States Public Health Service in
35 accordance with reporting requirements for HIV and a
36 diagnosed case of AIDS, or a related condition;

37 (7) A health facility or health care provider which
38 procures, processes, distributes or uses: (A) A human body
39 part from a deceased person with respect to medical
40 information regarding that person; (B) semen provided prior
41 to the effective date of this article for the purpose of artificial
42 insemination; (C) blood or blood products for transfusion or
43 injection; or (D) human body parts for transplant with respect
44 to medical information regarding the donor or recipient;

45 (8) Health facility staff committees or accreditation or
46 oversight review organizations which are conducting
47 program monitoring, program evaluation or service reviews
48 so long as any identity remains anonymous;

49 (9) Claims management personnel employed by or
50 associated with an insurer, health care service contractor,
51 health maintenance organization, self-funded health plan,
52 state-administered health care claims payer or any other
53 payer of health care claims, where the disclosure is to be used
54 solely for the prompt and accurate evaluation and payment of
55 medical or related claims. Information released under this
56 subsection is confidential and may not be released or

57 available to persons who are not involved in handling or
58 determining medical claims payment;

59 (10) Persons, health care providers or health facilities
60 engaging in or providing for the exchange of protected health
61 information among the same in order to provide health care
62 services to the patient, including, but not limited to,
63 disclosure through a health information exchange, disclosure
64 and exchange within health care facilities, and disclosure for
65 a permitted purpose, including disclosure to a legally
66 authorized public health authority; and

67 (11) A person allowed access to the record by a court
68 order that is issued in compliance with the following
69 provisions:

70 (i) No court of this state may issue the order unless the
71 court finds that the person seeking the test results has
72 demonstrated a compelling need for the test results which
73 cannot be accommodated by other means. In assessing
74 compelling need, the court shall weigh the need for
75 disclosure against the privacy interest of the test subject and
76 the public interest;

77 (ii) Pleadings pertaining to disclosure of test results shall
78 substitute a pseudonym for the true name of the test subject
79 of the test. The disclosure to the parties of the test subject's
80 true name shall be communicated confidentially in
81 documents not filed with the court;

82 (iii) Before granting any such order, the court shall, if
83 possible, provide the individual whose test result is in
84 question with notice and a reasonable opportunity to
85 participate in the proceedings if he or she is not already a
86 party;

87 (iv) Court proceedings as to disclosure of test results shall
88 be conducted in camera unless the subject of the test agrees

89 to a hearing in open court or unless the court determines that
90 the public hearing is necessary to the public interest and the
91 proper administration of justice; and

92 (v) Upon the issuance of an order to disclose test results,
93 the court shall impose appropriate safeguards against
94 unauthorized disclosure, which shall specify the person who
95 may have access to the information, the purposes for which
96 the information may be used and appropriate prohibitions on
97 future disclosure.

98 (b) No person to whom the results of an HIV-related test
99 have been disclosed pursuant to subsection (a) of this section
100 may disclose the test results to another person except as
101 authorized by said subsection.

102 (c) Notwithstanding the provisions set forth in
103 subsections (a) through (c) of this section, the use of HIV test
104 results to inform individuals named or identified as spouses,
105 sex partners or contacts, or persons who have shared needles
106 that they may be at risk of having acquired the HIV infection
107 as a result of possible exchange of body fluids, is permitted:
108 *Provided*, That the Bureau shall make a good faith effort to
109 inform spouses, sex partners, contacts or persons who have
110 shared needles that they may be at risk of having acquired the
111 HIV infection as a result of possible exchange of body fluids:
112 *Provided, however*, That the Bureau has no notification
113 obligations when the Bureau determines that there has been
114 no likely exposure of these persons to HIV from the infected
115 test subject within the ten-year period immediately prior to
116 the diagnosis of the infection. The name or identity of the
117 person whose HIV test result was positive is to remain
118 confidential. Spouses, contacts, or sex partners or persons
119 who have shared needles may be tested anonymously at the
120 State Bureau for public Health's designated test sites, or at
121 their own expense by a health care provider or an approved
122 laboratory of their choice confidentially should the test be

123 positive. A cause of action may not arise against the Bureau,
124 a physician or other health care provider from any such
125 notification.

126 (d) There is no duty on the part of the physician or health
127 care provider to notify the spouse or other sexual partner of,
128 or persons who have shared needles with, an infected
129 individual of their HIV infection and a cause of action may
130 not arise from any failure to make such notification.
131 However, if contact is not made, the Bureau will be so
132 notified.

CHAPTER 88

**(S. B. 392 - By Senators Snyder,
Klempa, Yost and McCabe)**

[Passed March 4, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-3 of the Code of West Virginia, 1931, as amended, relating to changing the definition of “accredited thoroughbred horse” to require registration with the West Virginia Thoroughbred Breeders Association.

Be it enacted by the Legislature of West Virginia:

That §19-23-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. HORSE AND DOG RACING.**§19-23-3. Definitions.**

1 Unless the context clearly requires a different meaning,
2 as used in this article:

3 (1) "Horse racing" means any type of horse racing,
4 including, but not limited to, thoroughbred racing and harness
5 racing;

6 (2) "Thoroughbred racing" means flat or running type
7 horse racing in which each horse participating is a
8 thoroughbred and mounted by a jockey;

9 (3) "Harness racing" means horse racing in which the
10 horses participating are harnessed to a sulky, carriage or other
11 vehicle and does not include any form of horse racing in
12 which the horses are mounted by jockeys;

13 (4) "Horse race meeting" means the whole period of time
14 for which a license is required by the provisions of section
15 one of this article;

16 (5) "Dog racing" means any type of dog racing,
17 including, but not limited to, greyhound racing;

18 (6) "Purse" means any purse, stake or award for which a
19 horse or dog race is run;

20 (7) "Racing association" or "person" means any
21 individual, partnership, firm, association, corporation or other
22 entity or organization of whatever character or description;

23 (8) "Applicant" means any racing association making
24 application for a license under the provisions of this article or
25 any person making application for a permit under the
26 provisions of this article or any person making application for
27 a construction permit under the provisions of this article;

28 (9) “License” means the license required by the
29 provisions of section one of this article;

30 (10) “Permit” means the permit required by the
31 provisions of section two of this article;

32 (11) “Construction permit” means the construction permit
33 required by the provisions of section eighteen of this article;

34 (12) “Licensee” means any racing association holding a
35 license required by the provisions of section one of this
36 article and issued under the provisions of this article;

37 (13) “Permit holder” means any person holding a permit
38 required by the provisions of section two of this article and
39 issued under the provisions of this article;

40 (14) “Construction permit holder” means any person
41 holding a construction permit required by the provisions of
42 section eighteen of this article and issued under the
43 provisions of this article;

44 (15) “Hold or conduct” includes “assist, aid or abet in
45 holding or conducting”;

46 (16) “Racing commission” means the West Virginia
47 Racing Commission;

48 (17) “Stewards” means the steward or stewards
49 representing the Racing Commission, the steward or stewards
50 representing a licensee and any other steward or stewards
51 whose duty it is to supervise any horse or dog race meeting,
52 all as may be provided by reasonable rules of the Racing
53 Commission which rules shall specify the number of
54 stewards to be appointed, the method and manner of their
55 appointment and their powers, authority and duties;

56 (18) "Pari-mutuel" means a mutuel or collective pool that
57 can be divided among those who have contributed their
58 wagers to one central agency, the odds to be reckoned in
59 accordance to the collective amounts wagered upon each
60 contestant running in a horse or dog race upon which the pool
61 is made, but the total to be divided among the first three
62 contestants on the basis of the number of wagers on these;

63 (19) "Pari-mutuel clerk" means any employee of a
64 licensed racing association who is responsible for the
65 collection of wagers, the distribution of moneys for winning
66 pari-mutuel tickets, verification of the validity of pari-mutuel
67 tickets and accounting for pari-mutuel funds;

68 (20) "Pool" means a combination of interests in a joint
69 wagering enterprise or a stake in such enterprise;

70 (21) "Legitimate breakage" is the percentage left over in
71 the division of a pool;

72 (22) "To the dime" means that wagers shall be figured
73 and paid to the dime;

74 (23) "Code" means the Code of West Virginia, 1931, as
75 heretofore and hereinafter amended;

76 (24) "Accredited thoroughbred horse" means a
77 thoroughbred horse that is registered with the West Virginia
78 Thoroughbred Breeders Association and that is:

79 (A) Foaled in West Virginia; or

80 (B) Sired by an accredited West Virginia sire; or

81 (C) As a yearling, finished twelve consecutive months of
82 verifiable residence in the state, except for thirty days' grace:

83 (i) For the horse to be shipped to and from horse sales
84 where the horse is officially entered in the sales catalogue of
85 a recognized thoroughbred sales company, or

86 (ii) For obtaining veterinary services, documented by
87 veterinary reports;

88 (25) “Accredited West Virginia sire” is a sire that is
89 permanently domiciled in West Virginia, stands a full season
90 in West Virginia and is registered with West Virginia
91 Thoroughbred Breeders Association;

92 (26) “Breeder of an accredited West Virginia horse” is
93 the owner of the foal at the time it was born in West Virginia;

94 (27) “Raiser of an accredited West Virginia horse” is the
95 owner of the yearling at the time it finished twelve
96 consecutive months of verifiable residence in the state.
97 During the period, the raiser will be granted one month of
98 grace for his or her horse to be shipped to and from
99 thoroughbred sales where the horse is officially entered in the
100 sales catalogue of a recognized thoroughbred sales company.
101 In the event the yearling was born in another state and
102 transported to this state, this definition does not apply after
103 the December 31, 2007, to any pari-mutuel racing facility
104 located in Jefferson County nor shall it apply after the
105 December 31, 2012, and thereafter to any pari-mutuel racing
106 facility located in Hancock County. Prior to the horse being
107 shipped out of the state for sales, the raiser must notify the
108 Racing Commission of his or her intentions;

109 (28) The “owner of an accredited West Virginia sire” is
110 the owner of record at the time the offspring is conceived;

111 (29) The “owner of an accredited West Virginia horse”
112 means the owner at the time the horse earned designated
113 purses to qualify for restricted purse supplements provided in
114 section thirteen-b of this article;

115 (30) “Registered greyhound owner” means an owner of
 116 a greyhound that is registered with the National Greyhound
 117 Association;

118 (31) “Fund” means the West Virginia Thoroughbred
 119 Development Fund established in section thirteen-b of this
 120 article; and

121 (32) “Regular purse” means both regular purses and
 122 stakes purses.



CHAPTER 89

**(S. B. 413 - By Senators Snyder, Klempa,
 Yost, McCabe, Unger and D. Facemire)**

[Passed March 8, 2011; in effect July 1, 2011.]
 [Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-5 and §19-23-6 of the Code of West Virginia, 1931, as amended, all relating to changing the title of the West Virginia Racing Commission’s racing secretary to executive director.

Be it enacted by the Legislature of West Virginia:

That §19-23-5 and §19-23-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 19. HORSE AND DOG RACING.**§19-23-5. Executive director and other personnel; qualifications; terms; powers and duties; compensation and expenses.**

1 (a) The Racing Commission shall appoint an executive
2 director to represent the Racing Commission who shall have
3 the powers and authority and perform such duties as the
4 Racing Commission directs. The executive director shall
5 preserve at the Racing Commission's principal office all
6 books, maps, records, documents and other papers of the
7 Racing Commission. The executive director shall, in addition
8 to all other duties imposed upon him or her by the Racing
9 Commission, serve in a liaison capacity between licensees
10 and the Racing Commission. The Racing Commission may
11 also employ, direct and define the duties of an assistant
12 executive director and such stenographers, clerks and other
13 office personnel as it deems necessary to carry out the duties
14 imposed upon it under the provisions of this article.

15 (b) In addition to the employees referred to above, the
16 Racing Commission shall employ, direct and define the
17 duties of a chief clerk, director of security, director of audit,
18 chief chemist, stewards to represent the Racing Commission,
19 supervisors of the pari-mutuel wagering conducted under the
20 provisions of this article, veterinarians, inspectors,
21 accountants, guards and all other employees deemed by the
22 Racing Commission to be essential in connection with any
23 horse or dog race meeting. The director of audit shall be a
24 certified public accountant or experienced public accountant.

25 (c) No individual shall knowingly be employed or be
26 continued in employment by the Racing Commission in any
27 capacity whatever:

28 (1) Who directly or indirectly, or in any capacity, owns or
29 has any interest, in any manner, in any racetrack where horse or
30 dog race meetings may be held, including, but not limited to, an
31 interest as owner, lessor, lessee, stockholder or employee;

32 (2) Who at the time is or has been within one year prior, a
33 member of the Legislature or an elective officer of this state unless
34 he or she is experienced and qualified as a racing official; or

35 (3) Who has been or shall be convicted of an offense
36 which, under the law of this state or any other state or of the
37 United States of America, constitutes a felony or is a
38 violation of article four, chapter sixty-one of this code. Any
39 steward employed by the Racing Commission or by a
40 licensee shall be a person of integrity and experienced and
41 qualified for such position by the generally accepted practices
42 and customs of horse or dog racing in the United States.

43 (d) The executive director and all other employees of the
44 Racing Commission shall serve at the will and pleasure of the
45 Racing Commission. The executive director and the other
46 employees referred to in this section as employees of the
47 Racing Commission shall receive such compensation as may
48 be fixed by the Racing Commission within the limit of
49 available funds and shall be reimbursed for all reasonable and
50 necessary expenses actually incurred in the performance of
51 their official duties.

52 (e) All compensation and reimbursement for expenses of
53 the members of the Racing Commission, the executive
54 director and all other employees of the Racing Commission
55 shall be paid from the funds in the hands of the State
56 Treasurer collected under the provisions of this article and
57 shall be itemized in the budget in the same manner as all
58 other departments of state government. No reimbursement
59 for expenses incurred shall be paid unless an itemized
60 account, under oath, is first filed with the State Auditor.

§19-23-6. Powers and authority of Racing Commission.

1 The Racing Commission has full jurisdiction over and
2 shall supervise all horse race meetings, all dog race meetings
3 and all persons involved in the holding or conducting of
4 horse or dog race meetings and, in this regard, it has plenary
5 power and authority:

6 (1) To investigate applicants and determine the eligibility
7 of the applicants for a license or permit or construction
8 permit under the provisions of this article;

9 (2) To fix, from time to time, the annual fee to be paid to
10 the Racing Commission for any permit required under the
11 provisions of section two of this article;

12 (3) To promulgate reasonable rules implementing and
13 making effective the provisions of this article and the powers
14 and authority conferred and the duties imposed upon the
15 Racing Commission under the provisions of this article,
16 including, but not limited to, reasonable rules under which all
17 horse races, dog races, horse race meetings and dog race
18 meetings shall be held and conducted, all of which reasonable
19 rules shall be promulgated in accordance with the provisions
20 of article three, chapter twenty-nine-a of this code except that
21 the Racing Commission shall promulgate separate rules, in
22 accordance with article three, chapter twenty-nine-a,
23 pertaining to the kinds of legal combination wagers which
24 may be placed in connection with the pari-mutuel system of
25 wagering authorized by this article;

26 (4) To register colors and assumed names and to fix, from
27 time to time, the annual fee to be paid to the Racing
28 Commission for any such registration;

29 (5) To fix and regulate the minimum purse to be offered
30 during any horse or dog race meeting;

31 (6) To fix a minimum and a maximum number of horse
32 races or dog races to be held on any respective racing day;

33 (7) To enter the office, horse racetrack, dog racetrack,
34 kennel, facilities and other places of business of any licensee
35 to determine whether the provisions of this article and its
36 reasonable rules are being complied with, and for this
37 purpose, the Racing Commission, its executive director,

38 representatives and employees may visit, investigate and
39 have free access to any such office, horse racetrack, dog
40 racetrack, kennel, facilities and other places of business;

41 (8) To investigate alleged violations of the provisions of
42 this article, its reasonable rules, orders and final decisions
43 and to take appropriate disciplinary action against any
44 licensee or permit holder or construction permit holder for a
45 violation or institute appropriate legal action for enforcement
46 or take disciplinary action and institute legal action;

47 (9) By reasonable rules, to authorize stewards, starters
48 and other racing officials to impose reasonable fines or other
49 sanctions upon a person connected with or involved in any
50 horse or dog racing or any horse or dog race meeting and to
51 authorize stewards to rule off the grounds of any horse or dog
52 racetrack any tout, bookmaker or other undesirable individual
53 determined inimical to the best interests of horse and dog
54 racing or the pari-mutuel system of wagering in connection
55 therewith;

56 (10) To require at any time the removal of any racing
57 official or racing employee of any licensee for the violation
58 of any provision of this article, any reasonable rule of the
59 Racing Commission or for any fraudulent practice;

60 (11) To acquire, establish, maintain and operate, or to
61 provide by contract for the maintenance and operation of, a
62 testing laboratory and related facilities for the purpose of
63 conducting saliva, urine and other tests on the horse or dog or
64 horses or dogs run or to be run in any horse or dog race
65 meeting and to purchase all equipment and supplies
66 considered necessary or desirable in connection with the
67 acquisition, establishment, maintenance and operation of any
68 testing laboratory and related facilities and all such tests;

69 (12) To hold up, in any disputed horse or dog race, the
70 payment of any purse pending a final determination of the
71 results thereof;

72 (13) To require each licensee to file an annual balance
73 sheet and profit and loss statement pertaining to the licensee's
74 horse or dog racing activities in this state together with a list
75 of each licensee's stockholders or other persons having any
76 beneficial interest in the horse or dog racing activities of the
77 licensee;

78 (14) To issue subpoenas for the attendance of witnesses
79 and subpoenas duces tecum for the production of any books,
80 records and other pertinent documents and to administer
81 oaths and affirmations to such witnesses, whenever, in the
82 judgment of the Racing Commission, it is necessary to do so
83 for the effective discharge of its duties under the provisions
84 of this article;

85 (15) To keep accurate and complete records of its
86 proceedings and to certify the same as may be appropriate;

87 (16) To take any other action that may be reasonable or
88 appropriate to effectuate the provisions of this article and its
89 reasonable rules;

90 (17) To provide breeders' awards, purse supplements and
91 moneys for capital improvements at racetracks in compliance
92 with section thirteen-b of this article; and

93 (18) To mediate on site, upon request of a party, all
94 disputes existing between the racetrack licensees located in
95 this state and representatives of a majority of the horse
96 owners and trainers licensed at the track which threaten to
97 disrupt any scheduled racing event or events. The Racing
98 Commission shall, upon the request of a party, mediate on
99 site all disputes existing between racetrack licensees and
100 representatives of pari-mutuel clerks which threaten to
101 disrupt any scheduled racing event or events. When a request
102 for mediation is made, the commission shall designate from
103 among its members one person to act as mediator in each
104 dispute that arises. Each opposing party involved in any

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105 dispute shall negotiate in good faith with the goal of reaching
106 a fair and mutual resolution. The mediator may issue
107 recommendations designed to assist each side toward
108 reaching a fair compromise. No owner or operator or any
109 horse owner or trainer or any pari-mutuel clerk licensed at the
110 track is required to abide by any recommendation made by
111 any mediator acting pursuant to this subsection.

112 The Racing Commission shall not interfere in the internal
113 business or internal affairs of any licensee.

CHAPTER 90

**(H. B. 2990 - By Delegates Doyle, Ferns,
Guthrie, Morgan, Storch and Swartzmiller)
[By Request of the Racing Commission]**

[Passed March 8, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-8 of the Code of West Virginia, 1931, as amended, relating to changing the renewal of Racing Commission-issued occupational permits from December 31 of each year to a schedule determined according to the applicant's date of birth.

Be it enacted by the Legislature of West Virginia:

That §19-23-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.**§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.**

1 (a) The Racing Commission shall promptly consider any
2 application for a license or permit, as the case may be. Based
3 upon such application and all other information before it, the
4 Racing Commission shall make and enter an order either
5 approving or denying the application. The application may be
6 denied for any reason specified in subsection (b) of this
7 section. If an application for a license is approved, the Racing
8 Commission shall issue a license to conduct a horse or dog
9 race meeting and shall designate on the face of the license the
10 kind or type of horse or dog racing for which the same is
11 issued, the racing association to which the same is issued, the
12 dates upon which the horse or dog race meeting is to be held
13 or conducted (which may be any weekdays, or week-nights,
14 including Sundays), the location of the horse or dog racetrack,
15 place or enclosure where the horse or dog race meeting is to be
16 held or conducted and other information as the Racing
17 Commission shall consider proper. If an application for a
18 permit is approved, the Racing Commission shall issue a
19 permit and shall designate on the face of the permit such
20 information as the Racing Commission considers proper.

21 (b) The Racing Commission may deny the application
22 and refuse to issue the license or permit, as the case may be,
23 which denial and refusal is final and conclusive unless a
24 hearing is demanded in accordance with the provisions of
25 section sixteen of this article, if the Racing Commission finds
26 that the applicant individually, if an individual, or the
27 partners or members, if a partnership, firm or association, or
28 the owners and directors, if a corporation:

- 29 (1) Has knowingly made false statement of a material fact
30 in the application or has knowingly failed to disclose any
31 information called for in the application;
- 32 (2) Is or has been guilty of any corrupt or fraudulent act,
33 practice or conduct in connection with a horse or dog race
34 meeting in this or any other state;
- 35 (3) Has been convicted, within ten years prior to the date
36 of the application, of an offense which under the law of this
37 state, of any other state or of the United States of America,
38 shall constitute a felony or a crime involving moral turpitude;
- 39 (4) Has failed to comply with the provisions of this article
40 or any reasonable rules of the Racing Commission;
- 41 (5) Has had a license to hold or conduct a horse or dog
42 race meeting or a permit to participate therein denied for just
43 cause, suspended or revoked in any other state;
- 44 (6) Has defaulted in the payment of any obligation or
45 debt due to this state under the provisions of this article;
- 46 (7) Is, if a corporation, neither incorporated under the laws
47 of this state nor qualified to do business within this state;
- 48 (8) In the case of an application for a license, has failed
49 to furnish bond or other adequate security, if the same is
50 required by the Racing Commission under the provisions of
51 section seven of this article;
- 52 (9) In the case of an application for a permit, is
53 unqualified to perform the duties required for the permit
54 sought; or
- 55 (10) In the case of an application for a permit, is, for just
56 cause, determined to be undesirable to perform the duties
57 required of the applicant.

58 (c) In issuing licenses and fixing dates for horse or dog
59 race meetings at the various horse racetracks and dog
60 racetracks in this state, the Racing Commission shall consider
61 the horse racing circuits and dog racing circuits with which
62 the horse racetracks and dog racetracks in this state are
63 associated or contiguous to and shall also consider dates
64 which are calculated to increase the tax revenues accruing
65 from horse racing and dog racing.

66 (d) A license issued under the provisions of this article is
67 neither transferable nor assignable to any other racing
68 association and may not permit the holding or conducting of
69 a horse or dog race meeting at any horse or dog racetrack,
70 place or enclosure not specified thereon. However, if the
71 specified horse or dog racetrack, place or enclosure becomes
72 unsuitable for the horse or dog race meeting because of flood,
73 fire or other catastrophe, or cannot be used for any reason,
74 the Racing Commission may, upon application, authorize the
75 horse or dog race meeting, or any remaining portion thereof,
76 to be conducted at any other racetrack, place or enclosure
77 available for that purpose, provided that the owner of the
78 racetrack, place or enclosure willingly consents to the use.

79 (e) No type of horse racing or dog racing shall be
80 conducted by a licensee at any race meeting other than that
81 type for which a license was issued.

82 (f) Each permit issued under the provisions of this section
83 shall be for a period of one year, unless approved otherwise
84 by the Commission. Effective January 1, 2012, each permit
85 shall be renewed according to the following schedule:
86 Permits issued to persons whose date of birth is January 1
87 through and including April 30 shall be renewed no later than
88 April 30 of each year; permits issued to persons whose date
89 of birth is May 1 through and including August 31 shall be
90 renewed no later than August 31 of each year; and permits
91 issued to persons whose date of birth is September 1 through
92 and including December 31 shall be renewed no later than

93 December 31 of each year. Each permit shall be valid at all
94 horse or dog race meetings during the period for which it was
95 issued unless it be sooner suspended or revoked in
96 accordance with the provisions of this article. A permit
97 issued under the provisions of this article is neither
98 transferable nor assignable to any other person.

99 (g) The Racing Commission shall propose rules for
100 legislative approval in accordance with the provisions of
101 article three, chapter twenty-nine-a of this code which
102 establish the criteria for the approval or denial of a license or
103 permit.

CHAPTER 91

**(Com. Sub. for H. B. 2959 - By Delegates Doyle,
Swartzmiller, Guthrie and Morgan)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §19-23-13b of the Code of West Virginia, 1931, as amended, relating to providing additional funds to the West Virginia Racing Commission for its Administration and Promotion Account.

Be it enacted by the Legislature of West Virginia:

That §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 23. HORSE AND DOG RACING.**§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.**

1 (a) The Racing Commission shall deposit moneys required
2 to be withheld by an association or licensee in subsection (b),
3 section nine of this article in a banking institution of its choice
4 in a special account to be known as "West Virginia Racing
5 Commission Special Account -- West Virginia Thoroughbred
6 Development Fund": *Provided*, That after the West Virginia
7 Lottery Commission has divided moneys between the West
8 Virginia Thoroughbred Development Fund and the West
9 Virginia Greyhound Breeding Development Fund pursuant to
10 the provisions of sections ten and ten-b, article twenty-two-a,
11 chapter twenty-nine of this code, the Racing Commission shall,
12 beginning October 1, 2005, deposit the remaining moneys
13 required to be withheld from an association or licensee
14 designated to the Thoroughbred Development Fund under the
15 provisions of subsection (b), section nine of this article,
16 subdivision (3), subsection (e), section twelve-b of this article,
17 subsection (b), section twelve-c of this article, paragraph (B),
18 subdivision (3), subsection (b), section thirteen-c of this article
19 and sections ten and ten-b, article twenty-two-a, chapter
20 twenty-nine of this code into accounts for each thoroughbred
21 racetrack licensee with a banking institution of its choice with
22 a separate account for each association or licensee. Each
23 separate account shall be a special account to be known as
24 "West Virginia Racing Commission Special Account -- West
25 Virginia Thoroughbred Development Fund" and shall name
26 the licensee for which the special account has been established:
27 *Provided, however*, That the Racing Commission shall deposit
28 all moneys paid into the Thoroughbred Development Fund by
29 a thoroughbred racetrack licensee that did not participate in the
30 Thoroughbred Development Fund for at least four consecutive
31 calendar years prior to December 31, 1992 from July 8, 2005
32 until the effective date of the amendment to this section passed

33 during the fourth extraordinary session of the seventy-seventh
34 Legislature shall be paid into the purse fund of that
35 thoroughbred racetrack licensee: *Provided further*, That the
36 moneys paid into the Thoroughbred Development Fund by a
37 thoroughbred racetrack licensee that did not participate in the
38 Thoroughbred Development Fund for at least four consecutive
39 calendar years prior to December 31, 1992, shall be transferred
40 into that licensee's purse fund until April 1, 2006. Notice of
41 the amount, date and place of the deposits shall be given by the
42 Racing Commission, in writing, to the state Treasurer. The
43 purpose of the funds is to promote better breeding and racing
44 of thoroughbred horses in the state through awards and purses
45 for accredited breeders/raisers, sire owners and thoroughbred
46 race horse owners: *Provided*, That five percent of the deposits
47 required to be withheld by an association or licensee in
48 subsection (b), section nine of this article shall be placed in a
49 special revenue account hereby continued in the state Treasury
50 called the "Administration and Promotion Account": *Provided*,
51 *however*, That four and one-half percent of the deposits into
52 the Thoroughbred Development Fund shall be placed in the
53 Administration and Promotion Account, except that of this
54 percentage, no more than \$305,000 shall be placed in the
55 account in any year.

56 (b) The Racing Commission is authorized to expend the
57 moneys deposited in the Administration and Promotion
58 Account at times and in amounts as the Commission
59 determines to be necessary for purposes of administering and
60 promoting the thoroughbred development program: *Provided*,
61 That during any fiscal year in which the Commission
62 anticipates spending any money from the account, the
63 Commission shall submit to the executive department during
64 the budget preparation period prior to the Legislature
65 convening before that fiscal year for inclusion in the
66 executive budget document and budget bill the recommended
67 expenditures, as well as requests of appropriations for the
68 purpose of administration and promotion of the program.
69 The Commission shall make an annual report to the

70 Legislature on the status of the Administration and Promotion
71 Account, including the previous year's expenditures and
72 projected expenditures for the next year.

73 (c) The fund or funds and the account or accounts
74 established in subsection (a) of this section shall operate on
75 an annual basis.

76 (d) Funds in the Thoroughbred Development Fund or
77 funds in the separate accounts for each association or licensee
78 as provided in subsection (a) of this section shall be
79 expended for awards and purses except as otherwise provided
80 in this section. Annually, the first \$800,000 shall be
81 available for distribution for a minimum of fourteen
82 accredited stakes races at a racetrack which has participated
83 in the West Virginia Thoroughbred Development Fund for a
84 period of more than four consecutive calendar years prior to
85 December 31, 1992. The weights for all accredited stakes
86 races shall be weight for age. One of the stakes races shall be
87 the West Virginia Futurity and the second shall be the Frank
88 Gall Memorial Stakes. For the purpose of participating in the
89 West Virginia Futurity only, all mares, starting with the
90 breeding season beginning February 1 through July 31, 2004,
91 and each successive breeding season thereafter shall be bred
92 back that year to an accredited West Virginia stallion only
93 which is registered with the West Virginia Thoroughbred
94 Breeders Association. The accredited stake races shall be
95 chosen by the committee set forth in subsection (f) of this
96 section.

97 (e) Awards and purses shall be distributed as follows:

98 (1) The breeders/raisers of accredited thoroughbred
99 horses that earn a purse at a participating West Virginia meet
100 shall receive a bonus award calculated at the end of the year
101 as a percentage of the fund dedicated to the breeders/raisers,
102 which shall be sixty percent of the fund available for
103 distribution in any one year. The total amount available for

104 the breeders'/raisers' awards shall be distributed according to
105 the ratio of purses earned by an accredited race horse to the
106 total amount earned in the participating races by all
107 accredited race horses for that year as a percentage of the
108 fund dedicated to the breeders/raisers. However, no
109 breeder/raiser may receive from the fund dedicated to
110 breeders'/raisers' awards an amount in excess of the earnings
111 of the accredited horse at West Virginia meets. In addition,
112 should a horse's breeder and raiser qualify for the same
113 award on the same horse, they will each be awarded one half
114 of the proceeds. The bonus referred to in this subdivision
115 may only be paid on the first \$100,000 of any purse and not
116 on any amounts in excess of the first \$100,000.

117 (2) The owner of an accredited West Virginia sire of an
118 accredited thoroughbred horse that earns a purse in any race
119 at a participating West Virginia meet shall receive a bonus
120 award calculated at the end of the year as a percentage of the
121 fund dedicated to sire owners, which shall be fifteen percent
122 of the fund available for distribution in any one year. The
123 total amount available for the sire owners' awards shall be
124 distributed according to the ratio of purses earned by the
125 progeny of accredited West Virginia stallions in the
126 participating races for a particular stallion to the total purses
127 earned by the progeny of all accredited West Virginia
128 stallions in the participating races. However, no sire owner
129 may receive from the fund dedicated to sire owners an
130 amount in excess of thirty-five percent of the accredited
131 earnings for each sire. The bonus referred to in this
132 subdivision shall only be paid on the first \$100,000 of any
133 purse and not on any amounts in excess of the first \$100,000.

134 (3) The owner of an accredited thoroughbred horse that
135 earns a purse in any participating race at a West Virginia
136 meet shall receive a restricted purse supplement award
137 calculated at the end of the year, which shall be twenty-five
138 percent of the fund available for distribution in any one year,
139 based on the ratio of the earnings in the races of a particular

140 race horse to the total amount earned by all accredited race
141 horses in the participating races during that year as a
142 percentage of the fund dedicated to purse supplements.
143 However, the owners may not receive from the fund
144 dedicated to purse supplements an amount in excess of
145 thirty-five percent of the total accredited earnings for each
146 accredited race horse. The bonus referred to in this
147 subdivision shall only be paid on the first \$100,000 of any
148 purse and not on any amounts in excess of the first \$100,000.

149 (4) In no event may purses earned at a meet held at a
150 track which did not make a contribution to the Thoroughbred
151 Development Fund out of the daily pool on the day the meet
152 was held qualify or count toward eligibility for an award
153 under this subsection.

154 (5) Any balance in the breeders/raisers, sire owners and
155 purse supplement funds after yearly distributions shall first
156 be used to fund the races established in subsection (f) of this
157 section. Any amount not so used shall revert into the general
158 account of the Thoroughbred Development Fund for each
159 racing association or licensee for distribution in the next year.

160 Distribution shall be made on the fifteenth day of each
161 February for the preceding year's achievements.

162 (f)(1) Each pari-mutuel thoroughbred horse track shall
163 provide at least one restricted race per racing day: *Provided*,
164 That sufficient horses and funds are available. For purposes
165 of this subsection, there are sufficient horses if there are at
166 least seven single betting interests received for the race:
167 *Provided, however*, That if sufficient horses and funds are
168 available, any thoroughbred horse racetrack whose licensee
169 participated in the Thoroughbred Development Fund for at
170 least four consecutive calendar years prior to December 31,
171 1992, shall provide two restricted races per racing day, at
172 least one of which may be split at the discretion of the racing
173 secretary. The restricted race required by this section must

174 be included in the first nine races written in the condition
175 book for that racing day.

176 (2) The restricted races established in this subsection
177 shall be administered by a three-member committee at each
178 track consisting of:

179 (A) The racing secretary at each track;

180 (B) A member appointed by the authorized representative
181 of a majority of the owners and trainers at the thoroughbred
182 track; and

183 (C) A member appointed by the West Virginia
184 Thoroughbred Breeders Association.

185 (3) Restricted races shall be funded by each racing
186 association from:

187 (A) Moneys placed in the general purse fund: *Provided*,
188 That a thoroughbred horse racetrack which did not participate
189 in the West Virginia Thoroughbred Development Fund for a
190 period of more than four consecutive years prior to December
191 31, 1992, may fund restricted races in an amount not to
192 exceed \$1,000,000 per year.

193 (B) Moneys as provided in subdivision (5), subsection (e)
194 of this section, which shall be placed in a special fund called
195 the "West Virginia Accredited Race Fund".

196 (4) The racing schedules, purse amounts and types of
197 races are subject to the approval of the West Virginia Racing
198 Commission.

199 (5) If less than seventy-five percent of the restricted races
200 required by this subsection fail to receive enough entries to
201 race, the Racing Commission shall, on a quarterly basis,
202 dedicate funds in each fund back to the general purse fund of

203 the racing association or licensee: *Provided*, That no moneys
204 may be dedicated back to a general purse fund if the
205 dedication would leave less than \$250,000 in the fund.

206 (g) As used in this section, "West Virginia bred-foal"
207 means a horse that was born in the State of West Virginia.

208 (h) To qualify for the West Virginia Accredited Race
209 Fund, the breeder must qualify under one of the following:

210 (1) The breeder of the West Virginia bred-foal is a West
211 Virginia resident;

212 (2) The breeder of the West Virginia bred-foal is not a
213 West Virginia resident, but keeps his or her breeding stock in
214 West Virginia year round; or

215 (3) The breeder of the West Virginia bred-foal is not a
216 West Virginia resident and does not qualify under
217 subdivision (2) of this subsection, but either the sire of the
218 West Virginia bred-foal is a West Virginia stallion, or the
219 mare is covered only by a West Virginia accredited stallion
220 or stallions before December 31 of the calendar year
221 following the birth of that West Virginia bred-foal.

222 (i) From July 1, 2001, West Virginia accredited
223 thoroughbred horses have preference for entry in all
224 accredited races at a thoroughbred racetrack at which the
225 licensee participates in the West Virginia Thoroughbred
226 Development Fund.

227 (j) Beginning July 1, 2006, any racing association
228 licensed by the Racing Commission to conduct thoroughbred
229 racing and permitting and conducting pari-mutuel wagering
230 under the provisions of this article must have a West Virginia
231 Thoroughbred Racing Breeders Program.

CHAPTER 92

**(Com. Sub. for H. B. 2958 - By Delegates Doyle,
Swartzmiller, Guthrie and Morgan)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §19-23-14 of the Code of West Virginia, 1931, as amended, relating to allowing the West Virginia Racing Commission to use certain permit and registration fees to pay salaries and other budgeted expenses; and providing that judges and the Racing Commission may also impose penalties.

Be it enacted by the Legislature of West Virginia:

That §19-23-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-14. Disposition of permit fees, registration fees and civil penalties.

1 (a) All permit fees and fees paid for the registration of
2 colors or assumed names collected by the Racing
3 Commission shall be paid by the commission to the State
4 Treasurer for deposit in the Racing Commission's general
5 administrative account.

6 (b) All civil penalties imposed by the stewards, judges or
7 the commission shall be paid into a relief fund and paid out

8 on the order of the commission for hospitalization, medical
9 care and funeral expenses occasioned by injuries or death
10 resulting from an accident sustained by any permit holder
11 while in the discharge of his or her duties under the
12 jurisdiction of the Racing Commission: *Provided*, That (1)
13 No payment may be made from the relief fund for any
14 hospitalization, medical care or funeral expenses of a permit
15 holder who is covered by workers' compensation or an
16 insurance policy providing payments for hospitalization,
17 medical care or funeral expenses; and (2) any balance in the
18 relief fund in excess of \$5,000, less any outstanding
19 obligations, shall thereupon be transferred by the Racing
20 Commission to the State Treasurer for deposit to the credit of
21 the General Revenue Fund of this state.



CHAPTER 93

**(H. B. 2989 - By Delegates Doyle, Swartzmiller,
Ferns, Storch, Guthrie and Morgan)
[By Request of the Racing Commission]**

[Passed March 9, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-16 of the Code of West Virginia, 1931, as amended, relating to addressing appeals from decisions of stewards or judges generally; adding references to suspensions or revocations made by judges; providing a process for seeking a stay pending appeal and authority for granting such a request; providing that hearing examiners appointed by the Racing Commission may hear appeals; creating requirements for hearing examiner recommended decision; and providing options for the Racing Commission following a hearing examiner recommended decision.

Be it enacted by the Legislature of West Virginia:

That §19-23-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

1 (a) Whenever the Racing Commission shall deny an
2 application for a license or a permit or shall suspend or
3 revoke a license or a permit, it shall make and enter an order
4 to that effect and serve a copy thereof on the applicant,
5 licensee or permit holder, as the case may be, in any manner
6 in which a summons may be served in a civil action or by
7 certified mail, return receipt requested. Such order shall state
8 the grounds for the action taken, and, in the case of an order
9 of suspension or revocation, shall state the effective date of
10 such suspension or revocation.

11 (b) Whenever a majority of the stewards or judges at any
12 horse or dog race meeting shall suspend or revoke a permit,
13 such suspension or revocation shall be effective immediately.
14 The stewards or judges shall, as soon as thereafter
15 practicable, make and enter an order to that effect and serve
16 a copy thereof on the permit holder, in any manner in which
17 a summons may be served in a civil action or by certified
18 mail, return receipt requested. Such order shall state the
19 grounds for the action taken.

20 (c) Any person adversely affected by any such order shall
21 be entitled to a hearing thereon if, within twenty days after
22 service of a copy thereof if served in any manner in which a
23 summons may be served as aforesaid or within twenty days
24 after receipt of a copy thereof if served by certified mail as
25 aforesaid, such person files with the Racing Commission a

26 written demand for such hearing. A demand for hearing shall
27 operate automatically to stay or suspend the execution of any
28 order suspending or revoking a license, but a demand for
29 hearing shall not operate automatically to stay or suspend the
30 execution of any order suspending or revoking a permit.
31 Upon the written request of any permit holder who has been
32 adversely affected by an order of the stewards or judges, a
33 stay may be granted by the Racing Commission, its
34 chairman, or by a member of the commission designated by
35 the chairman. A request for a stay must be filed with the
36 Racing Commission's executive director no later than the
37 deadline for filing a written demand for a hearing before the
38 commission. If a stay is granted, it is not a presumption that
39 the order of the stewards or judges is invalid. The Racing
40 Commission may require the person demanding a hearing to
41 give reasonable security for the costs thereof and if such
42 person does not substantially prevail at such hearing such
43 costs shall be assessed against such person and may be
44 collected by an action at law or other proper remedy.

45 (d) Upon receipt of a written demand for such hearing,
46 the Racing Commission shall set a time and place therefor
47 not less than ten and not more than thirty days thereafter.
48 Any hearing may be continued by the Racing Commission or
49 its appointed hearing examiner for good cause shown.

50 (e) All of the pertinent provisions of article five, chapter
51 twenty-nine-a of this code shall apply to and govern the
52 hearing and the administrative procedures in connection with
53 and following such hearing, with like effect as if the
54 provisions of said article five were set forth in this
55 subsection.

56 (f) Any such hearing shall be conducted by a quorum of
57 the Racing Commission or by a hearing examiner appointed
58 by the Racing Commission who is licensed to practice law in
59 the State of West Virginia. For the purpose of conducting
60 any such hearing, any member of the Racing Commission or

61 its appointed hearing examiner has the power and authority
62 to issue subpoenas and subpoenas duces tecum as provided
63 in section six of this article. Any such subpoenas and
64 subpoenas duces tecum shall be issued and served within the
65 time, for the fees and shall be enforced, as specified in
66 section one, article five of said chapter twenty- nine-a, and all
67 of the said section one provisions dealing with subpoenas and
68 subpoenas duces tecum shall apply to subpoenas and
69 subpoenas duces tecum issued for the purpose of a hearing
70 hereunder.

71 (g) At any such hearing the person who demanded the
72 same may represent such person's own interests or be
73 represented by an attorney-at-law admitted to practice before
74 any circuit court of this state. Upon request by the Racing
75 Commission, it shall be represented at any such hearing by
76 the Attorney General or his or her assistants without
77 additional compensation. The Racing Commission, with the
78 written approval of the Attorney General, may employ
79 special counsel to represent the Racing Commission at any
80 such hearing.

81 (h) After any such hearing and consideration of all of the
82 testimony, evidence and record in the case, the Racing
83 Commission shall render its decision in writing. The written
84 decision of the Racing Commission shall be accompanied by
85 findings of fact and conclusions of law as specified in section
86 three, article five, chapter twenty-nine-a of this code, and a
87 copy of such decision and accompanying findings and
88 conclusions shall be served by certified mail, return receipt
89 requested, upon the person demanding such hearing, and his
90 or her attorney of record, if any. If a hearing is conducted by
91 a hearing examiner appointed by the Racing Commission, he
92 or she shall prepare a written recommended decision that
93 meets the requirements of this subsection for the
94 commission's consideration. The Racing Commission, in its
95 discretion, may accept the recommendation in its entirety,

96 modify it, or reject it. If the Racing Commission modifies or
97 rejects a recommended decision of an appointed hearing
98 examiner, either in whole or in part, it shall issue a reasoned,
99 articulate explanation and a recitation of the underlying
100 evidence or other matters upon which it bases its decision,
101 including findings of fact and conclusions of law.

102 (i) The decision of the Racing Commission shall be final
103 unless reversed, vacated or modified upon judicial review
104 thereof in accordance with the provisions of section
105 seventeen of this article.

CHAPTER 94

**(H. B. 3000 - By Delegates Shaver, Crosier,
Stowers, Varner, Williams, Andes, Pethel,
Ferro, Romine, Evans and Walker)**

[Passed March 11, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to making it lawful to hunt coyotes with a green colored light.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

1 Except as authorized by the director, it is unlawful at any
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it
4 is plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take
6 or attempt to take, any live wild animal or wild bird out of its
7 den or place of refuge except as may be authorized by rules
8 promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light
10 in hunting, locating, attracting, taking, trapping or killing any
11 wild bird or wild animal, or to attempt to do so, while having
12 in his or her possession or subject to his or her control, or for
13 any person accompanying him or her to have in his or her
14 possession or subject to his or her control, any firearm,
15 whether cased or uncased, bow, arrow, or both, or other
16 implement or device suitable for taking, killing or trapping a
17 wild bird or animal: *Provided*, That it is lawful to hunt or
18 take raccoon, opossum or skunk by the use of artificial light
19 subject to the restrictions set forth in this subdivision:
20 *Provided, however*, That it is lawful to hunt or take coyotes
21 by the use of amber, green or red-colored artificial light
22 subject to the restrictions set forth in this subdivision. No
23 person is guilty of a violation of this subdivision merely
24 because he or she looks for, looks at, attracts or makes
25 motionless a wild bird or wild animal with or by the use of an
26 artificial light, unless at the time he or she has in his or her
27 possession a firearm, whether cased or uncased, bow, arrow,
28 or both, or other implement or device suitable for taking,
29 killing or trapping a wild bird or wild animal, or unless the
30 artificial light (other than the head lamps of an automobile or
31 other land conveyance) is attached to, a part of or used from
32 within or upon an automobile or other land conveyance.

33 Any person violating the provisions of this subdivision is
34 guilty of a misdemeanor and, upon conviction thereof, shall
35 for each offense be fined not less than \$100 nor more than
36 \$500 and shall be confined in jail for not less than ten days
37 nor more than one hundred days;

38 (4) Hunt for, take, kill, wound or shoot at wild animals or
39 wild birds from an airplane, or other airborne conveyance, an
40 automobile, or other land conveyance, or from a motor-
41 driven water conveyance, except as authorized by rules
42 promulgated by the director;

43 (5) Take any beaver or muskrat by any means other than
44 by trap;

45 (6) Catch, capture, take or kill by seine, net, bait, trap or
46 snare or like device of any kind any wild turkey, ruffed
47 grouse, pheasant or quail;

48 (7) Destroy or attempt to destroy needlessly or willfully
49 the nest or eggs of any wild bird or have in his or her
50 possession the nest or eggs unless authorized to do so under
51 rules promulgated by or under a permit issued by the director;

52 (8) Except as provided in section six of this article, carry
53 an uncased or loaded gun in any of the woods of this state
54 except during the open firearms hunting season for wild
55 animals and nonmigratory wild birds within any county of
56 the state unless he or she has in his or her possession a permit
57 in writing issued to him or her by the director: *Provided,*
58 That this section does not prohibit hunting or taking of
59 unprotected species of wild animals and wild birds and
60 migratory wild birds, during the open season, in the open
61 fields, open water and open marshes of the state;

62 (9) Have in his or her possession a crossbow with a
63 nocked bolt, a loaded firearm or a firearm from the magazine

64 of which all shells and cartridges have not been removed, in
65 or on any vehicle or conveyance, or its attachments, within
66 the state, except as may otherwise be provided by law or
67 regulation. Except as hereinafter provided, between five
68 o'clock postmeridian of one day and seven o'clock
69 antemeridian, eastern standard time of the day following, any
70 unloaded firearm or crossbow, being lawfully carried in
71 accordance with the foregoing provisions, may be so carried
72 only when in a case or taken apart and securely wrapped.
73 During the period from July 1 to September 30, inclusive, of
74 each year, the foregoing requirements relative to carrying
75 certain unloaded firearms are permissible only from eight-
76 thirty o'clock postmeridian to five o'clock antemeridian,
77 eastern standard time: *Provided*, That the time periods for
78 carrying unloaded and uncased firearms are extended for one
79 hour after the postmeridian times and one hour before the
80 antemeridian times established above if a hunter is preparing
81 to or in the process of transporting or transferring the
82 firearms to or from a hunting site, campsite, home or other
83 place of abode;

84 (10) Hunt, catch, take, kill, trap, injure or pursue with
85 firearms or other implement by which wildlife may be taken
86 after the hour of five o'clock antemeridian on Sunday on
87 private land without the written consent of the landowner any
88 wild animals or wild birds except when a big game season
89 opens on a Monday, the Sunday prior to that opening day will
90 be closed for any taking of wild animals or birds after five
91 o'clock antemeridian on that Sunday: *Provided*, That traps
92 previously and legally set may be tended after the hour of
93 five o'clock antemeridian on Sunday and the person so doing
94 may carry only a twenty-two caliber firearm for the purpose
95 of humanely dispatching trapped animals. Any person
96 violating the provisions of this subdivision is guilty of a
97 misdemeanor and, upon conviction thereof, in addition to any
98 fines that may be imposed by this or other sections of this
99 code, is subject to a \$100 fine;

100 (11) Hunt with firearms or long bow while under the
101 influence of intoxicating liquor;

102 (12) Hunt, catch, take, kill, injure or pursue a wild animal
103 or bird with the use of a ferret;

104 (13) Buy raw furs, pelts or skins of fur-bearing animals
105 unless licensed to do so;

106 (14) Catch, take, kill or attempt to catch, take or kill any
107 fish at any time by any means other than by rod, line and
108 hooks with natural or artificial lures unless otherwise
109 authorized by law or rules issued by the Director: *Provided,*
110 That snaring of any species of suckers, carp, fallfish and
111 creek chubs shall at all times be lawful;

112 (15) Employ or hire, or induce or persuade, by the use of
113 money or other things of value, or by any means, any person
114 to hunt, take, catch or kill any wild animal or wild bird except
115 those species on which there is no closed season, or to fish
116 for, catch, take or kill any fish, amphibian or aquatic life
117 which is protected by the provisions of this chapter or rules
118 of the director or the sale of which is prohibited;

119 (16) Hunt, catch, take, kill, capture, pursue, transport,
120 possess or use any migratory game or nongame birds
121 included in the terms of conventions between the United
122 States and Great Britain and between the United States and
123 United Mexican States for the protection of migratory birds
124 and wild mammals concluded, respectively, August 16, 1916,
125 and February 7, 1936, except during the time and in the
126 manner and numbers prescribed by the federal Migratory
127 Bird Treaty Act, 16 U.S.C. §703, *et seq.*, and regulations
128 made thereunder;

129 (17) Kill, take, catch or have in his or her possession,
130 living or dead, any wild bird other than a game bird; or

131 expose for sale or transport within or without the state any
132 bird except as aforesaid. No part of the plumage, skin or
133 body of any protected bird may be sold or had in possession
134 for sale except mounted or stuffed plumage, skin, bodies or
135 heads of the birds legally taken and stuffed or mounted,
136 irrespective of whether the bird was captured within or
137 without this state, except the English or European sparrow
138 (passer domesticus), starling (sturnus vulgaris) and cowbird
139 (molothrus ater), which may not be protected and the killing
140 thereof at any time is lawful;

141 (18) Use dynamite or any like explosive or poisonous
142 mixture placed in any waters of the state for the purpose of
143 killing or taking fish. Any person violating the provisions of
144 this subdivision is guilty of a felony and, upon conviction
145 thereof, shall be fined not more than \$500 or imprisoned for
146 not less than six months nor more than three years, or both
147 fined and imprisoned;

148 (19) Have a bow and gun, or have a gun and any arrow or
149 arrows, in the fields or woods at the same time;

150 (20) Have a crossbow in the woods or fields or use a
151 crossbow to hunt for, take or attempt to take any wildlife,
152 unless the person possesses a Class Y permit;

153 (21) Take or attempt to take turkey, bear, elk or deer with
154 any arrow unless the arrow is equipped with a point having
155 at least two sharp cutting edges measuring in excess of three
156 fourths of an inch wide;

157 (22) Take or attempt to take any wildlife with an arrow
158 having an explosive head or shaft, a poisoned arrow or an
159 arrow which would affect wildlife by any chemical action;

160 (23) Shoot an arrow across any public highway or from
161 aircraft, motor-driven watercraft, motor vehicle or other land
162 conveyance;

163 (24) Permit any dog owned by him or her or under his or
164 her control to chase, pursue or follow upon the track of any
165 wild animal or wild bird, either day or night, between May 1
166 and the August 15 next following: *Provided*, That dogs may
167 be trained on wild animals and wild birds, except deer and
168 wild turkeys, and field trials may be held or conducted on the
169 grounds or lands of the owner or by his or her bona fide
170 tenant or tenants or upon the grounds or lands of another
171 person with his or her written permission or on public lands
172 at any time: *Provided, however*, That nonresidents may not
173 train dogs in this state at any time except during the legal
174 small game hunting season: *Provided further*, That the person
175 training said dogs does not have firearms or other implements
176 in his or her possession during the closed season on wild
177 animals and wild birds, whereby wild animals or wild birds
178 could be taken or killed;

179 (25) Conduct or participate in a field trial, shoot-to-
180 retrieve field trial, water race or wild hunt hereafter referred
181 to as trial: *Provided*, That any person, group of persons, club
182 or organization may hold the trial at any time of the year
183 upon obtaining a permit as is provided in section fifty-six of
184 this article. The person responsible for obtaining the permit
185 shall prepare and keep an accurate record of the names and
186 addresses of all persons participating in said trial and make
187 same readily available for inspection by any natural resources
188 police officer upon request;

189 (26) Except as provided in section four of this article,
190 hunt, catch, take, kill or attempt to hunt, catch, take or kill
191 any wild animal, wild bird or wild fowl except during the
192 open season established by rule of the director as authorized
193 by subdivision (6), section seven, article one of this chapter;

194 (27) Hunting on public lands on Sunday after five o'clock
195 antemeridian is prohibited; and

196 (28) Hunt, catch, take, kill, trap, injure or pursue with
197 firearms or other implement which wildlife can be taken, on
198 private lands on Sunday after the hour of five o'clock
199 antemeridian: *Provided*, That the provisions of this
200 subdivision do not apply in any county until the county
201 commission of the county holds an election on the question
202 of whether the provisions of this subdivision prohibiting
203 hunting on Sunday shall apply within the county and the
204 voters approve the allowance of hunting on Sunday in the
205 county. The election is determined by a vote of the resident
206 voters of the county in which the hunting on Sunday is
207 proposed to be authorized. The county commission of the
208 county in which Sunday hunting is proposed shall give notice
209 to the public of the election by publication of the notice as a
210 Class II-0 legal advertisement in compliance with the
211 provisions of article three, chapter fifty-nine of this code and
212 the publication area for the publication is the county in which
213 the election is to be held. The date of the last publication of
214 the notice shall fall on a date within the period of the fourteen
215 consecutive days next preceding the election.

216 On the local option election ballot shall be printed the
217 following:

218 Shall hunting on Sunday be authorized in _____
219 County?

220 [] Yes [] No

221 (Place a cross mark in the square opposite your choice.)

222 Any local option election to approve or disapprove of the
223 proposed authorization of Sunday hunting within a county
224 shall be in accordance with procedures adopted by the
225 commission. The local option election may be held in
226 conjunction with a primary or general election or at a special

227 election. Approval shall be by a majority of the voters casting
228 votes on the question of approval or disapproval of Sunday
229 hunting at the election.

230 If a majority votes against allowing Sunday hunting, no
231 election on the issue may be held for a period of one hundred
232 four weeks. If a majority votes “yes”, no election
233 reconsidering the action may be held for a period of five
234 years. A local option election may thereafter be held if a
235 written petition of qualified voters residing within the county
236 equal to at least five percent of the number of persons who
237 were registered to vote in the next preceding general election
238 is received by the county commission of the county in which
239 Sunday hunting is authorized. The petition may be in any
240 number of counterparts. The election shall take place at the
241 next primary or general election scheduled more than ninety
242 days following receipt by the county commission of the
243 petition required by this subsection: *Provided*, That the issue
244 may not be placed on the ballot until all statutory notice
245 requirements have been met. No local law or regulation
246 providing any penalty, disability, restriction, regulation or
247 prohibition of Sunday hunting may be enacted and the
248 provisions of this article preempt all regulations, rules,
249 ordinances and laws of any county or municipality in conflict
250 with this subdivision.

251 (29) Hunt or conduct hunts for a fee where the hunter is
252 not physically present in the same location as the wildlife
253 being hunted within West Virginia.

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CHAPTER 95

(Com. Sub. for S. B. 357 - By Senator Laird)

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §20-2-21 of the Code of West Virginia, 1931, as amended, relating to reporting beaver and otter taken, tagged and checked.

Be it enacted by the Legislature of West Virginia:

That §20-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-21. Reporting beaver and otter pelts taken and tagged.

- 1 Each trapper shall present each beaver and otter, or each
- 2 pelt, to a game checking station or representative of the
- 3 division within thirty days after the close of a legal season.
- 4 A tag provided by the division shall be affixed to each beaver
- 5 and otter, or each pelt and remain attached to the animal or
- 6 pelt until it is processed into commercial fur.

CHAPTER 96

**(H. B. 2845 - By Delegates Williams, Moye,
D. Poling, Shaver, Skaff, Hamilton and Rowan)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §20-2-27 and §20-2-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-42x, all relating to senior resident lifetime hunting, fishing and trapping license and fee of \$25; and allowing persons who are sixty-five years of age before January 1, 2012, to remain exempt from the purchase of the license.

Be it enacted by the Legislature of West Virginia:

That §20-2-27 and §20-2-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §20-2-42x, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-27. Necessity for license.

1 Except as otherwise provided by law, no resident who
2 has reached his or her fifteenth birthday and who has not
3 reached his or her sixty-fifth birthday before January 1, 2012,
4 and no nonresident shall at any time take, hunt, pursue, trap
5 for, kill or chase any wild animals, wild birds, or fish for,
6 take, kill or catch any fish, amphibians or aquatic life of any

7 kind whatsoever in this state without first having secured a
8 license or permit and then only during the respective open
9 seasons, except that a nonresident who has not reached his or
10 her fifteenth birthday may fish for, take, kill or catch any fish,
11 amphibians or aquatic life of any kind whatsoever in this
12 state without first having secured a license or permit. A
13 person under the age of fifteen years shall not hunt or chase
14 any wild animals or wild birds upon lands of another unless
15 accompanied by a licensed adult.

16 A resident or nonresident member of any club,
17 organization or association or persons owning or leasing a
18 game preserve or fish preserve, plant or pond in this state
19 shall not hunt or fish therein without first securing a license
20 or permit as required by law: *Provided*, That resident
21 landowners or their resident children, or bona fide resident
22 tenants of land, may, without a permit or license, hunt and
23 fish on their own land during open seasons in accordance
24 with laws and rules applying to such hunting and fishing
25 unless the lands have been designated as a wildlife refuge or
26 preserve.

27 Licenses and permits shall be of the kinds and classes
28 set forth in this article and shall be conditioned upon the
29 payment of the fees established for the licenses and permits.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories are not required to
2 obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident
4 children, or resident parents, or bona fide resident tenants of
5 the land may hunt, trap or fish on their own land during open
6 season in accordance with the laws and rules applying to the
7 hunting, trapping and fishing without obtaining a license,
8 unless the lands have been designated as a wildlife refuge or
9 preserve.

10 (b) Any bona fide resident of this state who is totally
11 blind may fish in this state without obtaining a fishing
12 license. A written statement or certificate from a duly
13 licensed physician of this state showing the resident to be
14 totally blind shall serve in lieu of a fishing license and shall
15 be carried on the person of the resident at all times while he
16 or she is fishing in this state.

17 (c) All residents of West Virginia on active duty in the
18 armed forces of the United States of America, while on leave
19 or furlough, may hunt, trap or fish in season in West Virginia
20 without obtaining a license. Leave or furlough papers shall
21 serve in lieu of any license and shall be carried on the person
22 at all times while trapping, hunting or fishing.

23 (d) In accordance with the provisions of section twenty-
24 seven of this article, any resident sixty-five years of age or
25 older before January 1, 2012, is not required to have a license
26 to hunt, trap or fish during the legal seasons in West Virginia,
27 but in lieu of the license the person shall at all times while
28 hunting, trapping or fishing carry on his or her person a valid
29 West Virginia driver's license or nondriver identification
30 card issued by the Division of Motor Vehicles.

31 (e) Residents of the State of Maryland who carry
32 hunting or fishing licenses valid in that state may hunt or fish
33 from the West Virginia banks of the Potomac River without
34 obtaining licenses, but the hunting or fishing shall be
35 confined to the fish and waterfowl of the river proper and not
36 on its tributaries: *Provided*, That the State of Maryland shall
37 first enter into a reciprocal agreement with the director
38 extending a like privilege of hunting and fishing on the
39 Potomac River from the Maryland banks of the river to
40 licensed residents of West Virginia without requiring the
41 residents to obtain Maryland hunting and fishing licenses.

42 (f) Residents of the State of Ohio who carry hunting or
43 fishing licenses valid in that state may hunt or fish on the
44 Ohio River or from the West Virginia banks of the river
45 without obtaining licenses, but the hunting or fishing shall be
46 confined to fish and waterfowl of the river proper and to
47 points on West Virginia tributaries and embayments
48 identified by the director: *Provided*, That the State of Ohio
49 shall first enter into a reciprocal agreement with the director
50 extending a like privilege of hunting and fishing from the
51 Ohio banks of the river to licensed residents of West Virginia
52 without requiring the residents to obtain Ohio hunting and
53 fishing licenses.

54 (g) Any resident of West Virginia who was honorably
55 discharged from the Armed Forces of the United States of
56 America and who receives a veteran's pension based on total
57 permanent service-connected disability as certified to by the
58 Veterans Administration may hunt, trap or fish in this state
59 without obtaining a license. The director shall propose rules
60 for legislative approval in accordance with the provisions of
61 article three, chapter twenty-nine-a of this code setting forth
62 the procedure for the certification of the veteran, manner of
63 applying for and receiving the certification and requirements
64 as to identification while the veteran is hunting, trapping or
65 fishing.

66 (h) Any disabled veteran who is a resident of West
67 Virginia and who, as certified to by the Commissioner of
68 Motor Vehicles, is eligible to be exempt from the payment of
69 any fee on account of registration of any motor vehicle
70 owned by the disabled veteran as provided in section eight,
71 article ten, chapter seventeen-a of this code shall be permitted
72 to hunt, trap or fish in this state without obtaining a license.
73 The director shall propose rules for legislative approval in
74 accordance with the provisions of article three, chapter
75 twenty-nine-a of this code setting forth the procedure for the
76 certification of the disabled veteran, manner of applying for

77 and receiving the certification and requirements as to
78 identification while the disabled veteran is hunting, trapping
79 or fishing.

80 (i) Any resident or inpatient in any state mental health,
81 health or benevolent institution or facility may fish in this
82 state, under proper supervision of the institution involved,
83 without obtaining a fishing license. A written statement or
84 certificate signed by the superintendent of the mental health,
85 health or benevolent institution or facility in which the
86 resident or inpatient, as the case may be, is institutionalized
87 shall serve in lieu of a fishing license and shall be carried on
88 the person of the resident or inpatient at all times while he or
89 she is fishing in this state.

90 (j) Any resident who is developmentally disabled, as
91 certified by a physician and the Director of the Division of
92 Health, may fish in this state without obtaining a fishing
93 license. As used in this section, "developmentally disabled"
94 means a person with a severe, chronic disability which:

95 (1) Is attributable to a mental or physical impairment or
96 a combination of mental and physical impairments;

97 (2) Is manifested before the person attains age
98 twenty-two;

99 (3) Results in substantial functional limitations in three
100 or more of the following areas of major life activity:

101 (A) Self-care;

102 (B) Receptive and expressive language;

103 (C) Learning;

104 (D) Mobility;

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105 (E) Self-direction;

106 (F) Capacity for independent living; and

107 (G) Economic self-sufficiency; and

108 (4) Reflects the person's need for a combination and
109 sequence of care, treatment or supportive services which are
110 of lifelong or extended duration and are individually planned
111 and coordinated.

112 (k) A student eighteen years of age or younger receiving
113 instruction in fly fishing in a public, private, parochial or
114 Christian school in this state may fly fish in the state for catch
115 and release only without obtaining a fishing license while
116 under the supervision of an instructor authorized by the
117 school.

§20-2-42x. Class XS resident senior hunting, fishing and trapping license.

1 (a) A Class XS license is a resident senior hunting,
2 fishing and trapping license and entitles the licensee to hunt
3 and trap for all legal species of wild animals and wild birds,
4 to fish for all legal species of fish and to take frogs in all
5 counties of the state, except as prohibited by the rules of the
6 Director or Natural Resources Commission and when
7 additional licenses, stamps or permits are required. No
8 additional fees shall be required of Class XS licensees for a
9 Class CS stamp or a Class O stamp.

10 (b) A Class XS licensee shall be entitled to participate
11 with the same privileges and subject to the same restrictions
12 as a youth hunter in any special youth deer season established
13 by the Natural Resources Commission pursuant to the
14 provisions of subdivision (b)(7), section 17, article one of this
15 chapter.

16 (c) A Class XS license is required for residents or aliens
17 lawfully residing in the United States who have been
18 domiciled residents of West Virginia for a period of thirty
19 consecutive days or more immediately prior to the date of
20 their application for a license and who reach sixty-five years
21 of age on or after January 1, 2012.

22 (d) A Class XS license may be voluntarily purchased by
23 residents or aliens lawfully residing in the United States and
24 who have been domiciled residents of West Virginia for a
25 period of thirty consecutive days or more immediately prior
26 to the date of their application for a license and who reach
27 sixty-five years of age on or before December 31, 2011,
28 entitling those persons to the same privileges and subjecting
29 them to the same restrictions as any Class XS licensee.

30 (e) The fee for the Class XS license is \$25.

31 (f) A Class XS license is valid for the lifetime of the
32 purchaser without payment of additional fees for the
33 privileges associated with the Class X license, Class CS
34 stamp and the Class O stamp. This is a base license and does
35 not require the purchase of a prerequisite license to
36 participate in the activities specified in this section, except as
37 noted.

38 (g) The Division of Natural Resources shall coordinate
39 with the Department of Motor Vehicles to adopt and
40 implement a program whereby the senior hunting license
41 provided for in this section shall be identified by an
42 appropriate decal, sticker or other marking to be affixed to
43 the drivers' or chauffeurs' license of such person.

44 (h) On or before July 1 annually, the Division of Natural
45 Resources shall file an annual report with the joint committee
46 on government and finance describing its implementation of
47 the senior license program as set forth in this section. The

48 report shall include the number of licenses issued, any
49 increase in state funds as a result of the senior license created
50 by this section, any federal funds received as a result of the
51 implementation of the senior license created by this section
52 and the intended use of the those funds.

CHAPTER 97

**(Com. Sub. for H. B. 2745 - By Delegates Perry,
Hartman, Walters, Hall, Ashley and Azinger)
[By Request of the Insurance Commissioner]**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend reenact §33-4-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all relating to the Insurance Commissioner generally; providing that certain information provided by insurance companies to the Insurance Commissioner is confidential; exempting such confidential information from the freedom of information disclosure requirements; providing that such confidential information is not subject to subpoena or discoverable in a private civil action; commissioner's authority to release, share and receive documents otherwise treated as confidential in furtherance of the commissioner's official duties; stating conditions attached thereto; authorizing legislative rules; creating an all-payer claims database; defining terms; developing the database by the Insurance Commissioner, Secretary of Health and Human Resources and Chairperson of the Health Care Authority and providing powers in regard

thereto; exempting from purchasing rules; providing data subject to the database; providing for the protection of personal identifiers and the confidentiality of information; permitting fees and assessments to be assessed; authorizing penalties to be set by rule; authorizing injunctive relief; establishing special revenue account; and allowing other sanctions.

Be it enacted by the Legislature of West Virginia:

That §33-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

1 (a) Each licensed insurer shall annually on or before
2 March 1, unless the time is extended by the commissioner for
3 good cause shown, file with the commissioner a true
4 statement of its financial condition, transactions and affairs
5 as of the preceding December 31. Such statement shall be on
6 the appropriate National Association of Insurance
7 Commissioners annual statement blank; shall be prepared in
8 accordance with the National Association of Insurance
9 Commissioners annual statement instructions handbook; and
10 shall follow the accounting practices and procedures
11 prescribed by the National Association of Insurance
12 Commissioners accounting practices and procedures manual
13 as amended: *Provided*, That each licensed insurer shall also
14 file true statements of financial condition on a more frequent
15 basis if the commissioner so orders. The commissioner shall
16 establish the frequency, due date and form acceptable to him
17 or her for such filings: *Provided, however*, That the statement

18 of an alien insurer shall relate only to its transactions and
19 affairs in the United States unless the commissioner requires
20 otherwise.

21 (b) Each domestic insurer shall also file with the
22 commissioner a true quarterly statement of its financial
23 condition, transactions and affairs as of March 31, June 30,
24 and September 30, of each year. Quarterly statements shall
25 be due forty-five days after the end of each quarter. All
26 quarterly statements shall be submitted on the appropriate
27 National Association of Insurance Commissioners quarterly
28 statement blank; shall be prepared in accordance with the
29 National Association of Insurance Commissioners quarterly
30 statement instructions; and shall follow the accounting
31 practices and procedures prescribed by the National
32 Association of Insurance Commissioners accounting
33 practices and procedures manual, as amended. The
34 commissioner may subject any licensed insurer to the
35 requirements of this section whenever the commissioner
36 deems it necessary.

37 (c) The commissioner may require that all or part of the
38 information contained in the annual statement blank and the
39 quarterly statement blanks be submitted in a
40 computer-readable form compatible with the electronic data
41 processing system of the department.

42 (d) Each domestic, foreign and alien insurer, organization
43 or corporation that is subject to the requirements of this
44 section shall annually, on or before March 1 each year, and
45 forty-five days after the end of the first, second and third
46 calendar quarters, file with the National Association of
47 Insurance Commissioners a copy of its annual statement
48 convention blank and the quarterly statement blanks, along
49 with such additional filings as prescribed by the
50 commissioner and shall pay the fee established by the
51 National Association of Insurance Commissioners for filing,
52 review or processing of the information. The information

53 filed with the National Association of Insurance
54 Commissioners shall be in the same format and scope as that
55 required by the commissioner and shall include the signed
56 jurat page and any other required information. Any
57 amendments and addenda to the annual statement filing and
58 quarterly statement filings subsequently filed with the
59 commissioner shall also be filed with the National
60 Association of Insurance Commissioners.

61 (e) Foreign insurers that are domiciled in a state which
62 has a law substantially similar to subsection (a) of this section
63 shall be deemed in compliance with this section.

64 (f) In the absence of actual malice, members of the
65 National Association of Insurance Commissioners, their duly
66 authorized committees, subcommittees and task forces, their
67 delegates, National Association of Insurance Commissioners
68 employees and all others charged with the responsibility of
69 collecting, reviewing, analyzing and disseminating the
70 information developed from the filing of the annual statement
71 convention blanks and the quarterly statement blanks shall be
72 acting as agents of the commissioner under the authority of
73 this article and shall not be subject to civil liability for libel,
74 slander or any other cause of action by virtue of their
75 collection, review, and analysis or dissemination of the data
76 and information collected from the filings required
77 hereunder.

78 (g)(1) All financial analysis ratios and examination
79 synopses concerning insurance companies that are submitted
80 to the commissioner by the National Association of Insurance
81 Commissioners insurance regulatory information system,
82 and all actuarial reports, work papers and actuarial
83 summaries submitted by insurers in conjunction with their
84 annual financial statements is confidential by law and
85 privileged. These documents are not subject to disclosure
86 pursuant to chapter twenty-nine-b of this code, are not subject
87 to subpoena and are not subject to discovery or admissible as

88 evidence in any private civil action: *Provided*, That nothing
89 in this section may be construed to limit the ability of parties
90 in a civil action to discover such information from insurers
91 under the Rules of Civil Procedure.

92 (2) This subsection shall not be construed to limit the
93 commissioner's authority to release the documents to the
94 Actuarial Board for Counseling and Discipline (ABCD), so
95 long as the material is required for the purpose of
96 professional disciplinary proceedings and the ABCD
97 establishes procedures satisfactory to the commissioner for
98 preserving the confidentiality of the documents; nor shall this
99 section be construed to limit the commissioner's authority to
100 use the documents, materials or other information in
101 furtherance of any regulatory or legal action brought as part
102 of the commissioner's official duties.

103 (3) Neither the commissioner nor any person who
104 received documents, materials or other information while
105 acting under the authority of the commissioner shall be
106 permitted or required to testify in any private civil action
107 concerning any confidential documents, materials or
108 information subject to subdivision (1) of this subsection.

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

111 (A) May share documents, materials or other information,
112 including the confidential and privileged documents,
113 materials or information subject to subparagraph (1) of this
114 subsection with other state, federal and international
115 regulatory agencies, and with state, federal and international
116 law-enforcement authorities, provided that the recipient
117 agrees to maintain the confidentiality and privileged status of
118 the document, material or other information and has the legal
119 authority to maintain confidentiality; and

120 (B) May receive documents, materials or information,
121 including otherwise confidential and privileged documents,
122 materials or information, from the National Association of
123 Insurance Commissioners and its affiliates and subsidiaries,
124 and from regulatory and law-enforcement officials of other
125 foreign or domestic jurisdictions, and shall maintain as
126 confidential or privileged any document, material or
127 information received with notice or the understanding that it
128 is confidential or privileged under the laws of the jurisdiction
129 that is the source of the document, material or information.

130 (h) The commissioner may suspend, revoke or refuse to
131 renew the certificate of authority of any insurer failing to file
132 its annual statement or the quarterly statement blanks, or any
133 other statement of financial condition required by this
134 section, when due or within any extension of time which the
135 commissioner, for good cause, may have granted.

136 (i) Any variance to the requirements of this section shall
137 require the express authorization of the commissioner.

138 (j) The commissioner shall propose rules for legislative
139 approval in accordance with article three, chapter
140 twenty-nine-a of this code to effectuate the requirements of
141 this article.

ARTICLE 4A. ALL-PAYER CLAIMS DATABASE.

§33-4A-1. Definitions.

1 (a) "All-payer claims database" or "APCD" means the
2 program authorized by this article that collects, retains, uses
3 and discloses information concerning the claims and
4 administrative expenses of health care payers.

5 (b) "Chair" means the chairperson of the West Virginia
6 Health Care Authority.

7 (c) “Commissioner” means the West Virginia Insurance
8 Commissioner.

9 (d) “Data” means the data elements from enrollment and
10 eligibility files, specified types of claims, and reference files
11 for data elements not maintained in formats consistent with
12 national coding standards.

13 (e) “Health care payer” means any entity that pays or
14 administers the payment of health insurance claims or
15 medical claims under workers’ compensation insurance to
16 providers in this state, including workers’ compensation
17 insurers; accident and sickness insurers; nonprofit hospital
18 service corporations, medical service corporations and dental
19 service organizations; nonprofit health service corporations;
20 prepaid limited health service organizations; health
21 maintenance organizations; and government payers,
22 including but not limited to Medicaid, Medicare and the
23 public employees insurance agency; the term also includes
24 any third-party administrator including any pharmacy benefit
25 manager, that administers a fully-funded or self-funded plan.

26 A “health insurance claim” does not include:

27 (1) Any claim paid under an individual or group policy
28 providing coverage only for accident, or disability income
29 insurance or any combination thereof; coverage issued as a
30 supplement to liability insurance; liability insurance,
31 including general liability insurance and automobile
32 liability; credit-only insurance; coverage for on-site medical
33 clinics; other similar insurance coverage, which may be
34 specified by rule, under which benefits for medical care are
35 secondary or incidental to other insurance benefits; or

36 (2) Any of the following if provided under a separate
37 policy, certificate, or contract of insurance: Limited scope
38 dental or vision benefits; benefits for long-term care, nursing
39 home care, home health care, community-based care, or any

40 combination thereof; coverage for only a specified disease or
41 illness; or hospital indemnity or other fixed indemnity
42 insurance.

43 “Health insurance claims” shall only include information
44 from Medicare supplemental policies if the same information
45 is obtained with respect to Medicare.

46 (f) “Personal identifiers” means information relating to an
47 individual member or insured that identifies, or can be used
48 to identify, locate or contact a particular individual member
49 or insured, including but not limited to the individual’s name,
50 street address, social security number, e-mail address and
51 telephone number.

52 (g) “Secretary” means the Secretary of the West Virginia
53 Department of Health and Human Services.

54 (h) “Third-party administrator” has the same meaning
55 ascribed to it in section two, article forty-six of this chapter.

**§33-4A-2. Establishment and development of an all-payer
claims database.**

1 (a) The secretary, commissioner and chair, collectively
2 referred to herein as the “MOU parties”, shall enter into a
3 memorandum of understanding to develop an all-payer
4 claims database program.

5 (b) The memorandum of understanding shall, at a
6 minimum:

7 (1) Provide that the commissioner will have primary
8 responsibility for the collection of the data in order to
9 facilitate the efficient administration of state oversight, the
10 secretary will have primary responsibility for the retention of
11 data supplied to the state under its health care oversight

12 function, and the chair will have primary responsibility for
13 the dissemination of the data;

14 (2) Delineate the MOU parties' roles, describe the
15 process to develop legislative rules required by this article,
16 establish communication processes and a coordination plan,
17 and address vendor relationship management;

18 (3) Provide for the development of a plan for the financial
19 stability of the APCD, including provision for funding by the
20 MOU parties' agencies; and

21 (4) Provide for the use of the hospital discharge data
22 collected by the West Virginia Health Care Authority as a
23 tool in the validation of APCD reports.

**§33-4A-3. Powers of the commissioner, secretary and chair;
exemption from purchasing rules.**

1 (a) The MOU parties may:

2 (1) Accept gifts, bequests, grants or other funds dedicated
3 to the furtherance of the goals of the APCD;

4 (2) Select a vendor to handle data collection and
5 processing and such other tasks as deemed appropriate;

6 (3) Enter into agreements with other states to perform
7 joint administrative operations, share information and assist
8 in the development of multistate efforts to further the goals
9 of this article: *Provided*, That any such agreements must
10 include adequate protections with respect to the
11 confidentiality of the information to be shared and comply
12 with all state and federal laws and regulations;

13 (4) Enter into memoranda of understanding with other
14 governmental agencies to carry out any of its functions,

15 including contracts with other states to perform joint
16 administrative functions;

17 (5) Attempt to ensure that the requirements with respect
18 to the reporting of data be standardized so as to minimize the
19 expense to parties subject to similar requirements in other
20 jurisdictions;

21 (6) Enter into voluntary agreements to obtain data from
22 payers not subject to mandatory reporting under this article;
23 and

24 (7) Exempt a payer or class of payers from the
25 requirements of this article for cause.

26 (b) Contracts for professional services for the
27 development and operation of the APCD are not subject to
28 the provisions of article three, chapter five-a of this code
29 relating to the Purchasing Division of the Department of
30 Administration. The award of such contracts shall be subject
31 to a competitive process established by the MOU parties.

32 (c) The MOU parties shall make an annual report to the
33 Governor, which shall also be filed with the Joint Committee
34 on Government and Finance, summarizing the activities of
35 the APCD in the preceding calendar year.

§33-4A-4. Data subject to this article.

1 (a) All health care payers shall submit data to the
2 commissioner or an entity designated by the commissioner at
3 such times and in a form specified in rule. Any health care
4 payer that the commissioner determines paid or administered
5 the payment of health insurance claims in this state for
6 policies on fewer than 500 covered lives in the previous
7 calendar year is exempt from the requirements of this article.

8 (b) Data submitted in accordance with this article shall be
9 considered confidential by law and privileged, are exempt
10 from disclosure pursuant to chapter twenty-nine-b of this
11 code, are not open to public inspection, are not subject to
12 subpoena, are not subject to discovery or admissible in
13 evidence in any criminal, private civil or administrative
14 action, are not subject to production pursuant to court order,
15 and shall only be used and disclosed pursuant to law and
16 legislative rules promulgated pursuant to this article.

17 (c)(1) Data submitted to and retained by the APCD shall
18 be available as a resource for the MOU parties to
19 continuously review health care utilization, expenditures and
20 performance in West Virginia and to enhance the ability of
21 consumers to make informed and cost-effective health care
22 decisions.

23 (2) Data submitted to and retained by the APCD may, in
24 accordance with this article and the legislative rules
25 promulgated pursuant to this article, also be available as a
26 resource for insurers, researchers, employers, providers,
27 purchasers of health care, consumers, and state agencies.

28 (d) Notwithstanding any other provision of law to the
29 contrary, the APCD shall not disclose any data that contain
30 personal identifiers. The MOU parties, in accordance with
31 procedures and standards set forth in legislative rule, may
32 approve access to other data elements not prohibited from
33 disclosure by the APCD, as well as synthetic or created
34 unique identifiers, for use by researchers, including
35 government agencies, with established protocols for
36 safeguarding confidential or privileged information. The
37 MOU parties' use of the data shall not constitute a disclosure.

§33-4A-5. User fees; waiver.

1 Reasonable user fees may be set in the manner
2 established in legislative rule, for the right to access and use

3 the data available from the APCD. The chair may reduce or
4 waive the fee if he or she determines that the user is unable
5 to pay the scheduled fees and that the user has a viable plan
6 to use the data or information in research of general value to
7 the public health.

§33-4A-6. Enforcement; injunctive relief.

1 In the event of any violation of this article or any rule
2 adopted thereunder, the commissioner, secretary or chair may
3 seek to enjoin a further violation in the circuit court of
4 Kanawha County. Injunctive relief ordered pursuant to this
5 section may be in addition to any other remedies and
6 enforcement actions available to the commissioner under this
7 chapter.

§33-4A-7. Special revenue account created.

1 (a) There is hereby created a special revenue account in
2 the State Treasury, designated the West Virginia All-Payer
3 Claims Database Fund, which shall be an interest-bearing
4 account and may be invested in the manner permitted by
5 article six, chapter twelve of this code, with the interest
6 income a proper credit to the fund and which shall not revert
7 to the general revenue, unless otherwise designated in law.
8 The fund shall be overseen by the commissioner, secretary
9 and chair, shall be administered by the commissioner, and
10 shall be used to pay all proper costs incurred in implementing
11 the provisions of this article.

12 (b) The following funds shall be paid into this account:

13 (1) Penalties imposed on health care payers pursuant to
14 this article and rules promulgated hereunder;

15 (2) Funds received from the federal government;

16 (3) Appropriations from the Legislature; and

17 (4) All other payments, gifts, grants, bequests or income
18 from any source.

§33-4A-8. Rule-making authority.

1 To effectuate the provisions of this article, the MOU
2 parties may propose joint rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code as necessary to implement this
5 article. No actions to collect data or assess fees pursuant to
6 this article may be undertaken until rules promulgated
7 hereunder are made effective. Such rules may include, but
8 are not limited to, the following:

9 (a) Procedures for the collection, retention, use and
10 disclosure of data from the APCD, including procedures and
11 safeguards to protect the privacy, integrity, confidentiality
12 and availability of any data;

13 (b) Penalties against health care payers for violation of
14 rules governing the submission of data, including a schedule
15 of fines for failure to file data or to pay assessments;

16 (c) Fees payable by users of the data and the process for
17 a waiver or reduction of user fees. Any such fees shall be
18 established at a level that, when considered together with
19 other available funding sources, is deemed necessary to
20 sustain the operation of the APCD;

21 (d) A proposed time frame for the creation of the
22 database;

23 (e) Criteria for determining whether data collected,
24 beyond the listed personal identifiers, is confidential clinical
25 data, confidential financial data or privileged medical
26 information, and procedures to give affected providers and
27 health care payers notice and opportunity to comment in

28 response to requests for information that may be considered
29 confidential or privileged;

30 (f) Penalties, including fines and other administrative
31 sanctions, that may be imposed by the commissioner for a
32 health care payer's failure to comply with requirements of
33 this article and rules adopted hereunder; and

34 (g) Establishment of advisory boards to provide advice to
35 the MOU parties with respect to the various functions of the
36 APCD.

CHAPTER 98

(Com. Sub. for S. B. 472 - By Senator Minard)

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-32a, relating to providing an exemption from insurance licensing requirements for vendors of portable electronics when offering portable electronics insurance generally; defining terms; establishing requirements and authority regarding the sale of portable electronics insurance; stating authority of vendors of portable electronics to sell portable electronics insurance; requiring training of employees who sell portable electronics insurance; providing for the suspension of privileges and imposition of fines for violations of this section; providing for the termination of portable electronics insurance; and giving the Insurance Commissioner the authority to bring administrative actions on supervising entities.

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 §33-12-32a, to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32a. Exemption for Portable Electronics.

1 (a) Definitions. For purposes of this section, the
2 following terms have the following meanings:

3 (1) “Authorized Representative” means any individual
4 who is authorized by a vendor to engage in portable
5 electronic transactions on behalf of the vendor and who
6 conducts such transactions under the direction and authority
7 of such vendor;

8 (2) “Customer” means a person who purchases portable
9 electronics or services;

10 (3) “Enrolled Customer” means a customer who elects
11 coverage under a portable electronics insurance policy and
12 issued to a vendor of portable electronics;

13 (4) “Location” means any physical location in the State
14 of West Virginia or any website, call center site, or similar
15 location directed to residents of the State of West Virginia.

16 (5) “Portable Electronics” means electronic devices that
17 are portable in nature, their accessories and services related
18 to the use of the device;

19 (6) (A) “Portable Electronic Insurance” means insurance
20 providing coverage for the repair or replacement of portable
21 electronics which may cover portable electronics against any

22 one or more of the following causes of loss: loss, theft,
23 mechanical failure, malfunction, damage or other applicable
24 perils.

25 (B) “Portable Electronics Insurance” does not include:

26 (i) A service contract or extended warranty providing
27 coverage limited solely to the repair, replacement, or
28 maintenance of property for the operational or structural
29 failure of property due to a defect in materials, workmanship,
30 accidental damage from handling or normal wear and tear;

31 (ii) A policy of insurance covering a seller’s or a
32 manufacturer’s obligations under a warranty; or

33 (iii) A homeowner’s, renter’s, private passenger
34 automobile, commercial multi-peril, or similar policy.

35 (7) “Portable Electronics Transaction” means:

36 (A) The sale or lease of portable electronics by a vendor
37 to a customer; or

38 (B) The sale of a service related to the use of portable
39 electronics by a vendor to a customer.

40 (8) “Supervising Entity” means a business entity that is
41 a licensed insurance producer or an insurer;

42 (9) “Vendor” means a person in the business of engaging
43 in portable electronics transactions directly or indirectly,
44 whether through an entity that is a corporate affiliate or an
45 entity with which it has a contractual relationship to market
46 portable electronics.

47 (b) *Exemption from licensing.*

48 (1) A vendor that complies with the provisions of this
49 section is deemed to be in compliance with the requirements
50 of this article regarding producer licensing not only for the
51 vendor, but also for any employee or authorized
52 representative of the vendor selling or offering coverage
53 under a policy of portable electronics insurance to a customer
54 at each location at which the vendor engages in portable
55 electronics transactions.

56 (2) A vendor shall maintain, and share with its
57 supervising entity, a list of all locations in this state that offer
58 portable electronics insurance on its behalf. The supervising
59 entity shall submit the list to the Insurance Commissioner
60 within thirty days upon request.

61 (c) *Requirements for Sale of Portable Electronics*
62 *Insurance.*

63 (1) At every location where portable electronics
64 insurance is offered to customers, brochures or other written
65 materials must be made available to a prospective customer
66 which:

67 (A) Disclose that portable electronics insurance may
68 provide a duplication of coverage already provided by a
69 customer's homeowner's insurance policy, renter's insurance
70 policy or other source of coverage;

71 (B) State that the enrollment by the customer in a
72 portable electronics insurance program is not required in
73 order to purchase or lease portable electronics or services;

74 (C) Summarize the material terms of the insurance
75 coverage, including:

76 (i) The identity of the insurer;

77 (ii) The identity of the supervising entity;

78 (iii) The amount of any applicable deductible and how it
79 is to be paid;

80 (iv) Benefits of the coverage; and

81 (v) Key terms and conditions of coverage such as
82 whether portable electronics may be repaired or replaced with
83 similar make and model reconditioned or non-original
84 manufacturer parts or equipment.

85 (D) Summarize the process for filing a claim, including
86 a description of any requirements:

87 (i) To return portable electronics and the maximum fee
88 applicable in the event the enrolled customer fails to comply
89 with any equipment return requirements; and

90 (ii) Proof of loss requirements.

91 (E) State that the enrolled customer may cancel
92 enrollment for coverage under a portable electronics
93 insurance policy at any time and the person paying the
94 premium shall receive a refund of any applicable unearned
95 premium.

96 (2) Portable electronics insurance may be offered on a
97 month to month or other periodic basis as a group or master
98 commercial insurance policy issued to a vendor of portable
99 electronics under which individual customers may elect to
100 enroll for coverage.

101 (3) Eligibility and underwriting standards for customers
102 electing to enroll in coverage shall be established for each
103 portable electronics insurance program.

104 (d) *Authority of Vendors of Portable Electronics.*

105 (1) The employees and authorized representatives of
106 vendors may sell or offer portable electronics insurance to
107 customers and shall not be subject to licensure as an
108 insurance producer under this article provided that:

109 (A) The vendor complies with the provisions of this
110 section;

111 (B) The insurer issuing the portable electronics insurance
112 appoints a supervising entity to supervise the administration
113 of the program including development of a training program
114 for employees and authorized representatives of the vendors.
115 The training required by this subdivision shall comply with
116 the following:

117 (i) The training shall be delivered to all employees and
118 authorized representatives of the vendors who sell or offer
119 portable electronics insurance.

120 (ii) The training may be provided in electronic form.
121 However, if conducted in an electronic form the supervising
122 entity shall implement a supplemental education program
123 regarding portable electronics insurance that is conducted and
124 overseen by licensed employees of the supervising entity; and

125 (iii) Each employee and authorized representative shall
126 receive basic instruction about the portable electronics
127 insurance offered to customers and the disclosures required
128 under subsection (c);

129 (C) No employee or authorized representative of a vendor
130 of portable electronics shall advertise, represent or otherwise
131 hold himself or herself out as a licensed insurance producer.

132 (D) No employee or authorized representative of a vendor
133 of portable electronics is compensated based primarily on the

134 number of customers enrolled for portable electronics
135 insurance coverage but may receive compensation for
136 enrolling customers for portable electronics insurance
137 coverage so long as the compensation for those activities is
138 incidental to their overall compensation.

139 (2) The charges for portable electronics insurance
140 coverage may be billed and collected by the vendor of
141 portable electronics. Any charge to the enrolled customer for
142 coverage that is not included in the cost associated with the
143 purchase or lease of portable electronics or related services
144 shall be separately itemized on the enrolled customer's bill.
145 If the coverage is included in the purchase or lease of
146 portable electronics or related services the vendor shall
147 clearly and conspicuously disclose to the enrolled customer
148 that the portable electronics insurance coverage is included
149 with the portable electronics or related services. No vendor
150 shall require the purchase of any kind of insurance specified
151 in this section as a condition of the purchase or lease of
152 portable electronics or services. Vendors billing and
153 collecting such charges shall not be required to maintain such
154 funds in a segregated account provided that the vendor is
155 authorized by the insurer to hold such funds in an alternative
156 manner and remits such amounts to the supervising entity
157 within sixty (60) days of receipt. All funds received by a
158 vendor from an enrolled customer for the sale of portable
159 electronics insurance shall be considered funds held in trust
160 by the vendor in a fiduciary capacity for the benefit of the
161 insurer. Vendors may receive compensation for billing and
162 collection services.

163 (e) *Suspension of Privileges.*

164 (1) If a vendor of portable electronics or its employee or
165 authorized representative violates any provision of this
166 section, the Insurance Commissioner may do any of the
167 following:

168 (A) After notice and hearing, impose fines not to exceed
169 \$500 per violation or \$5,000 in the aggregate for such
170 conduct.

171 (B) After notice and hearing, impose other penalties that
172 the commissioner deems necessary and reasonable to carry
173 out the purpose of this article, including:

174 (i) Suspending the privilege of transacting portable
175 electronics insurance pursuant to this section at specific
176 business locations where violations have occurred; and

177 (ii) Suspending or revoking the ability of individual
178 employees or authorized representatives to act under the
179 section.

180 (f) *Termination of Portable Electronics Insurance.*

181 (1) Notwithstanding any other provision of law:

182 (A) An insurer may terminate or otherwise change the
183 terms and conditions of a policy of portable electronics
184 insurance only upon providing the policyholder and enrolled
185 customers with at least thirty (30) days notice.

186 (B) If the insurer changes the terms and conditions, then
187 the insurer shall provide the vendor policyholder with a
188 revised policy of endorsement and each enrolled customer
189 with a revised certificate, endorsement, updated brochure, or
190 other evidence indicating a change in the terms and
191 conditions has occurred and a summary of material changes.

192 (2) Notwithstanding subdivision (1) of this subsection, an
193 insurer may terminate an enrolled customer's enrollment
194 under a portable electronics insurance policy upon fifteen
195 (15) days notice for discovery of fraud or material
196 misrepresentation in obtaining coverage or in the presentation
197 of a claim number.

198 (3) Notwithstanding subdivision (2) of this subsection, an
199 insurer may immediately terminate an enrolled customer's
200 enrollment under a portable electronics insurance policy:

201 (A) For nonpayment of premium;

202 (B) If the enrolled customer ceases to have an active
203 service with the vendor of portable electronics; or

204 (C) If an enrolled customer exhausts the aggregate limit
205 of liability, if any, under the terms of the portable electronics
206 insurance policy and the insurer sends notice of termination
207 to the enrolled customer within thirty (30) calendar days after
208 exhaustion of the limit. However, if notice is not timely sent,
209 enrollment shall continue notwithstanding the aggregate limit
210 of liability until the insurer sends notice of termination to the
211 enrolled customer.

212 (4) Where a portable electronics insurance policy is
213 terminated by a policyholder, the policyholder shall mail or
214 deliver written notice to each enrolled customer advising the
215 enrolled customer of the termination. The written notice
216 shall be mailed or delivered to the enrolled customer at least
217 (30) days prior to the termination.

218 (5) Whenever notice is required pursuant to this section,
219 it shall be in writing and may be mailed or delivered to the
220 vendor of portable electronics at the vendor's mailing address
221 and to its affected enrolled customers' last known mailing
222 addresses on file with the insurer. If notice is mailed, the
223 insurer or vendor of portable electronics, as the case may be,
224 shall maintain proof of mailing in a form authorized or
225 accepted by the United States Postal Service or other
226 commercial mail delivery service. Alternatively, an insurer
227 or vendor policyholder may comply with any notice required
228 by this section by providing electronic notice to a vendor or
229 its affected enrolled customers, as the case may be, by

230 electronic means. If notice is accomplished through
231 electronic means the insurer or vendor of portable
232 electronics, as the case may be, shall maintain proof that the
233 notice was sent.

234 (g) If a supervising entity is determined by the Insurance
235 Commissioner to have not performed its required duties
236 under this section or has otherwise violated any provision of
237 this section, it shall be subject to the administrative actions
238 set forth in section twenty-four of this article

CHAPTER 99

(S. B. 435 - By Senator Minard)

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §33-12C-3, §33-12C-5, §33-12C-7 and §33-12C-8 of the Code of West Virginia, 1931, as amended, all relating to surplus lines insurance; defining terms; providing for compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010; authorizing Insurance Commissioner to enter into multistate agreements regarding taxation of surplus lines insurance; establishing a blended taxation rate; authorizing participation in clearinghouse or other process for allocation of taxes; specifying disbursement and distribution of moneys; restricting certain provisions to transactions in which West Virginia is the home state of the insurer; and exempting certain large entities from compliance with due diligence requirements.

Be it enacted by the Legislature of West Virginia:

That §33-12C-3, §33-12C-5, §33-12C-7 and §33-12C-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12C. SURPLUS LINE – NONADMITTED INSURANCE ACT.

§33-12C-3. Definitions.

1 As used in this article:

2 (a) “Admitted insurer” means an insurer licensed to do an
3 insurance business in this state.

4 (b) “Business entity” means a corporation, association,
5 partnership, limited liability company, or other legal entity.

6 (c) “Capital”, as used in the financial requirements of
7 section five of this article, means funds paid in for stock or
8 other evidence of ownership.

9 (d) “Commissioner” means the Insurance Commissioner
10 of West Virginia, or the commissioner’s deputies or staff, or
11 the commissioner, director or superintendent of insurance in
12 any other state.

13 (e) “Eligible surplus lines insurer” means a nonadmitted
14 insurer with which a surplus lines licensee may place surplus
15 lines insurance pursuant to section five of this article.

16 (f) “Exempt commercial purchaser” means any person
17 purchasing commercial insurance that, at the time of
18 placement, employs or retains a qualified risk manager to
19 negotiate insurance coverage, has paid aggregate nationwide
20 commercial property and casualty insurance premiums in
21 excess of \$100,000 in the immediately preceding twelve
22 months, and meets at least one of the following criteria:

23 (1) Has a net worth in excess of \$20 million;

24 (2) Generates annual revenues in excess of \$50 million;

25 (3) Employs more than five hundred full-time or full-time
26 equivalent employees per individual insured or is a member
27 of an affiliated group employing more than one thousand
28 employees in the aggregate;

29 (4) Is a not-for-profit organization or public entity
30 generating annual budgeted expenditures of at least \$30
31 million; or

32 (5) Is a municipality with a population in excess of fifty
33 thousand persons: *Provided*, That on January 1, 2015 and
34 every five years thereafter, the amounts in subdivisions (1),
35 (2) and (4) of this subsection shall be adjusted to reflect the
36 percentage change for such five-year period in the Consumer
37 Price Index for All Urban Consumers published by the
38 Bureau of Labor Statistics of the federal Department of
39 Labor.

40 (g) "Export" means to place surplus lines insurance with
41 a nonadmitted insurer.

42 (h) "Foreign decree" means any decree or order in equity
43 of a court located in any United States jurisdiction, including
44 a federal court of the United States, against any person
45 engaging in the transaction of insurance in this state.

46 (i) "Home state" means, with respect to an insured:

47 (1) The state in which an insured maintains its principal
48 place of business or, in the case of an individual, the
49 individual's principal residence; or

50 (2) If one hundred percent of the insured risk is located
51 out of the state referred to in subdivision one of this

52 subsection, the state to which the greatest percentage of the
53 insured's taxable premium for that insurance contract is
54 allocated.

55 (j) "Individual" means any private or natural person as
56 distinguished from a partnership, corporation, limited liability
57 company or other legal entity.

58 (k) "Insurance" means any of the lines of authority in
59 section ten, article one of this chapter.

60 (l) "Insurance producer" means a person required to be
61 licensed under the laws of this state to sell, solicit or
62 negotiate insurance. Wherever the word "agent" appears in
63 this chapter, it shall mean an individual insurance producer.

64 (m) "Insurer" means any person, corporation, association,
65 partnership, reciprocal exchange, interinsurer, Lloyds insurer,
66 insurance exchange syndicate, fraternal benefit society, and
67 any other legal entity engaged in the business of making
68 contracts of insurance under section two, article one of this
69 chapter.

70 (n) "Kind of insurance" means one of the types of
71 insurance required to be reported in the annual statement
72 which must be filed with the commissioner by admitted
73 insurers.

74 (o) "License" means a document issued by this state's
75 Insurance Commissioner authorizing an individual to act as
76 a surplus lines licensee for the lines of authority specified in
77 the document. The license itself does not create any
78 authority, actual, apparent or inherent, in the holder to
79 represent or commit an insurer.

80 (p) "Nonadmitted insurer" means an insurer not licensed
81 to do an insurance business in this state.

82 (q) “Nonadmitted and Reinsurance Reform Act of 2010”
83 or “NRRRA” means those provisions incorporated as Subtitle
84 B of the Dodd-Frank Wall Street Reform and Consumer
85 Protection Act, P.L. 111-517.

86 (r) “Nonadmitted Insurance Multi-State Agreement” or
87 “NIMA” means the model agreement adopted by the
88 National Association of Insurance Commissioners on
89 December 16, 2010, to facilitate the collection, allocation and
90 disbursement of premium taxes attributable to the placement
91 of nonadmitted insurance, provide for uniform methods of
92 allocation and reporting among nonadmitted insurance risk
93 classifications, and share information among states relating
94 to nonadmitted insurance premium taxes; such term includes
95 the agreements’ allocation tables and any changes made
96 thereto in response to changes to the laws of signatory states.

97 (s) “Person” means any natural person or other entity,
98 including, but not limited to, individuals, partnerships,
99 associations, trusts or corporations.

100 (t) “Policy” or “contract” means any contract of insurance
101 including, but not limited to, annuities, indemnity, medical or
102 hospital service, workers’ compensation, fidelity or
103 suretyship.

104 (u) “Signatory state” means a state that has entered into
105 NIMA or a similar allocation procedure with this state.

106 (v) “Surplus”, as used in the financial requirements of
107 section five of this article, means funds over and above
108 liabilities and capital of the company for the protection of
109 policyholders.

110 (w) “Surplus lines insurance” means any property and
111 casualty insurance in this state on properties, risks or
112 exposures, located or to be performed in this state, permitted

113 to be placed through a surplus lines licensee with a
114 nonadmitted insurer eligible to accept such insurance,
115 pursuant to section seven of this article. Wherever the term
116 “excess line” appears in this chapter, it shall mean surplus
117 lines insurance.

118 (x) “Surplus lines licensee” means an individual licensed
119 under section five of this article to place insurance on
120 properties, risks or exposures located or to be performed in
121 this state with nonadmitted insurers eligible to accept such
122 insurance. Wherever the term “excess line broker” appears
123 in this chapter, it shall mean surplus lines licensee.

124 (y) “Transaction of insurance” –

125 (1) For purposes of this article, any of the following acts
126 in this state effected by mail or otherwise by a nonadmitted
127 insurer or by any person acting with the actual or apparent
128 authority of the insurer, on behalf of the insurer, is deemed to
129 constitute the transaction of an insurance business in or from
130 this state:

131 (A) The making of or proposing to make, as an insurer,
132 an insurance contract;

133 (B) The making of or proposing to make, as guarantor or
134 surety, any contract of guaranty or suretyship as a vocation
135 and not merely incidental to any other legitimate business or
136 activity of the guarantor or surety;

137 (C) The taking or receiving of an application for
138 insurance;

139 (D) The receiving or collection of any premium,
140 commission, membership fees, assessments, dues or other
141 consideration for insurance or any part thereof;

142 (E) The issuance or delivery in this state of contracts of
143 insurance to residents of this state or to persons authorized to
144 do business in this state;

145 (F) The solicitation, negotiation, procurement or
146 effectuation of insurance or renewals thereof;

147 (G) The dissemination of information as to coverage or
148 rates, or forwarding of applications, or delivery of policies or
149 contracts, or inspection of risks, the fixing of rates or
150 investigation or adjustment of claims or losses or the
151 transaction of matters subsequent to effectuation of the
152 contract and arising out of it, or any other manner of
153 representing or assisting a person or insurer in the transaction
154 of risks with respect to properties, risks or exposures located
155 or to be performed in this state;

156 (H) The transaction of any kind of insurance business
157 specifically recognized as transacting an insurance business
158 within the meaning of the statutes relating to insurance;

159 (I) The offering of insurance or the transacting of
160 insurance business; or

161 (J) Offering an agreement or contract which purports to
162 alter, amend or void coverage of an insurance contract.

163 (2) The provisions of this subsection shall not operate to
164 prohibit employees, officers, directors or partners of a
165 commercial insured from acting in the capacity of an
166 insurance manager or buyer in placing insurance on behalf of
167 the employer, provided that the person's compensation is not
168 based on buying insurance.

169 (3) The venue of an act committed by mail is at the point
170 where the matter transmitted by mail is delivered or issued
171 for delivery or takes effect.

172 (z) "Line of insurance" means coverage afforded under
173 the particular policy that is being placed.

174 (aa) "Model allocation schedule and reporting form"
175 means the current version of the NAIC model allocation
176 schedule and reporting form for surplus lines insurers.

177 (bb) "Wet marine and transportation insurance" means:

178 (1) Insurance upon vessels, crafts, hulls and other
179 interests in them or with relation to them;

180 (2) Insurance of marine builder's risks, marine war risks
181 and contracts of marine protection and indemnity insurance;

182 (3) Insurance of freight and disbursements pertaining to
183 a subject of insurance within the scope of this subsection; and

184 (4) Insurance of personal property and interests therein, in
185 the course of exportation from or importation into any country,
186 or in the course of transportation coastwise or on inland waters,
187 including transportation by land, water or air from point of
188 origin to final destination, in connection with any and all risks or
189 perils of navigation, transit or transportation, and while being
190 prepared for and while awaiting shipment, and during any
191 incidental delays, transshipment, or reshipment; provided,
192 however, that insurance of personal property and interests
193 therein shall not be considered wet marine and transportation
194 insurance if the property has:

195 (A) Been transported solely by land; or

196 (B) Reached its final destination as specified in the bill of
197 lading or other shipping document; or

198 (C) The insured no longer has an insurable interest in the
199 property.

§33-12C-5. Surplus lines insurance.

1 (a) The placement of surplus lines insurance is subject to
2 this section only if this state is the insured's home state.

3 (b) Surplus lines insurance may be placed by a surplus
4 lines licensee if:

5 (1) Each insurer is an eligible surplus lines insurer; and

6 (2) Each insurer is authorized to write the type of
7 insurance in its domiciliary jurisdiction; and

8 (3) The full amount or line of insurance cannot be
9 obtained from insurers who are admitted to do business in
10 this state. The full amount or type of insurance may be
11 procured from eligible surplus lines insurers, provided that a
12 diligent search is made by the individual insurance producer
13 among the insurers who are admitted to transact and are
14 actually writing the particular type of insurance in this state
15 if any are writing it: *Provided*, That such a search is not
16 required when the licensee is seeking to procure or place
17 nonadmitted insurance for an exempt commercial purchaser
18 if the licensee disclosed to such purchaser that such insurance
19 may or may not be available from the admitted market that
20 may provide greater protection with more regulatory
21 oversight and that such purchaser has subsequently requested
22 in writing that the licensee procure or place such insurance
23 from a nonadmitted insurer; and

24 (4) All other requirements of this article are met.

25 (c) Subject to subdivision (3), subsection (b) of this
26 section, a surplus lines licensee may place any coverage with
27 a nonadmitted insurer eligible to accept the insurance, unless
28 specifically prohibited by the laws of this state.

29 (d) A surplus lines licensee shall not place coverage with
30 a nonadmitted insurer, unless, at the time of placement, the
31 surplus lines licensee has determined that the nonadmitted
32 insurer:

33 (1) Has established satisfactory evidence of good repute
34 and financial integrity; and

35 (2) Qualifies under one of the following paragraphs:

36 (A) Has capital and surplus or its equivalent under the
37 laws of its domiciliary jurisdiction which equals the greater
38 of:

39 (i)(I) The minimum capital and surplus requirements
40 under the law of this state; or

41 (II) \$15 million;

42 (ii) The requirements of subparagraph (i), paragraph (A)
43 of this subdivision may be satisfied by an insurer's
44 possessing less than the minimum capital and surplus upon
45 an affirmative finding of acceptability by the commissioner.
46 The finding shall be based upon such factors as quality of
47 management, capital and surplus of any parent company,
48 company underwriting profit and investment income trends,
49 market availability and company record and reputation within
50 the industry. In no event shall the commissioner make an
51 affirmative finding of acceptability when the nonadmitted
52 insurer's capital and surplus is less than \$4,500,000; or

53 (B) In the case of an insurance exchange created by the
54 laws of a state other than this state:

55 (i) The syndicates of the exchange shall maintain under
56 terms acceptable to the commissioner capital and surplus, or
57 its equivalent under the laws of its domiciliary jurisdiction,
58 of not less than \$75 million in the aggregate; and

59 (ii) The exchange shall maintain under terms acceptable
60 to the commissioner not less than fifty percent of the
61 policyholder surplus of each syndicate in a custodial account
62 accessible to the exchange or its domiciliary commissioner in
63 the event of insolvency or impairment of the individual
64 syndicate; and

65 (iii) In addition, each individual syndicate to be eligible
66 to accept surplus lines insurance placements from this state
67 shall meet either of the following requirements:

68 (I) For insurance exchanges which maintain funds in an
69 amount of not less than \$15 million for the protection of all
70 exchange policyholders, the syndicate shall maintain under
71 terms acceptable to the commissioner minimum capital and
72 surplus, or its equivalent under the laws of the domiciliary
73 jurisdiction, of not less than \$5 million; or

74 (II) For insurance exchanges which do not maintain funds
75 in an amount of not less than \$15 million for the protection
76 of all exchange policyholders, the syndicate shall maintain
77 under terms acceptable to the commissioner minimum capital
78 and surplus, or its equivalent under the laws of its domiciliary
79 jurisdiction, of not less than the minimum capital and surplus
80 requirements under the laws of its domiciliary jurisdiction or
81 \$15 million, whichever is greater; or

82 (C) In the case of a Lloyd's plan or other similar group of
83 insurers, which consists of unincorporated individual
84 insurers, or a combination of both unincorporated and
85 incorporated insurers:

86 (i) The plan or group maintains a trust fund that shall
87 consist of a trusteed account representing the group's
88 liabilities attributable to business written in the United States;
89 and

90 (ii) In addition, the group shall establish and maintain in
91 trust a surplus in the amount of \$100 million; which shall be

92 available for the benefit of United States surplus lines
93 policyholders of any member of the group.

94 (iii) The incorporated members of the group shall not be
95 engaged in any business other than underwriting as a member
96 of the group and shall be subject to the same level of
97 solvency regulation and control by the group's domiciliary
98 regulator as are the unincorporated members.

99 (iv) The trust funds shall be maintained in an irrevocable
100 trust account in the United States in a qualified financial
101 institution, consisting of cash, securities, letters of credit or
102 investments of substantially the same character and quality as
103 those which are eligible investments for the capital and
104 statutory reserves of admitted insurers to write like kinds of
105 insurance in this state and, in addition, the trust required by
106 subparagraph (ii) of this subdivision shall satisfy the
107 requirements of the standard trust agreement required for
108 listing with the National Association of Insurance
109 Commissioners (NAIC) International Insurers Department or
110 any successor thereto; or

111 (D) In the case of a group of incorporated insurers under
112 common administration, which has continuously transacted
113 an insurance business outside the United States for at least
114 three years immediately prior to this time, and which submits
115 to this state's authority to examine its books and records and
116 bears the expense of the examination:

117 (i) The group shall maintain an aggregate policyholders'
118 surplus of \$10 billion; and

119 (ii) The group shall maintain in trust a surplus in the
120 amount of \$10 billion; which shall be available for the benefit
121 of United States surplus lines policyholders of any member
122 of the group; and

123 (iii) Each insurer shall individually maintain capital and
124 surplus of not less than \$25 million per company.

125 (iv) The trust funds shall satisfy the requirements of the
126 standard trust agreement requirement for listing with the
127 NAIC International Insurers Department or any successor
128 thereto, and shall be maintained in an irrevocable trust
129 account in the United States in a qualified financial
130 institution, and shall consist of cash, securities, letters of
131 credit or investments of substantially the same character and
132 quality as those which are eligible investments for the capital
133 and statutory reserves of admitted insurers to write like kinds
134 of insurance in this state.

135 (v) Additionally, each member of the group shall make
136 available to the commissioner an annual certification of the
137 member's solvency by the member's domiciliary regulator
138 and its independent public accountant; or

139 (E) Except for an exchange or plan complying with
140 paragraph (B), (C) or (D) of this subdivision, an insurer not
141 domiciled in one of the United States or its territories shall
142 satisfy the capital and surplus requirements of paragraph (A),
143 subdivision (2), subsection (d) of this section and shall have
144 in force a trust fund of not less than the greater of:

145 (i) \$5,400,000; or

146 (ii) Thirty percent of the United States surplus lines gross
147 liabilities, excluding aviation, wet marine and transportation
148 insurance liabilities, not to exceed \$60 million, to be
149 determined annually on the basis of accounting practices and
150 procedures substantially equivalent to those promulgated by
151 this state, as of December 31 next preceding the date of
152 determination, where:

153 (I) The liabilities are maintained in an irrevocable trust
154 account in the United States in a qualified financial
155 institution, on behalf of U.S. policyholders consisting of
156 cash, securities, letters of credit or other investments of
157 substantially the same character and quality as those which
158 are eligible investments pursuant to article eight of this
159 chapter for the capital and statutory reserves of admitted
160 insurers to write like kinds of insurance in this state. The
161 trust fund, which shall be included in any calculation of
162 capital and surplus or its equivalent, shall satisfy the
163 requirements of the Standard Trust Agreement required for
164 listing with the NAIC International Insurers Department or
165 any successor thereto; and

166 (II) The insurer may request approval from the
167 commissioner to use the trust fund to pay valid surplus lines
168 claims: *Provided, however,* That the balance of the trust fund
169 is never less than the greater of \$5,400,000 or thirty percent
170 of the insurer's current gross U.S. surplus lines liabilities,
171 excluding aviation, wet marine and transportation insurance
172 liabilities; and

173 (III) In calculating the trust fund amount required by this
174 subsection, credit shall be given for surplus lines deposits
175 separately required and maintained for a particular state or
176 U.S. territory, not to exceed the amount of the insurer's loss
177 and loss adjustment reserves in the particular state or
178 territory;

179 (F) An insurer or group of insurers meeting the
180 requirements to do a surplus lines business in this state at the
181 effective date of this law shall have two years from the date
182 of enactment to meet the requirements of paragraph (E) of
183 this subdivision, as follows:

184 185	Year Following Enactment	Trust Fund Requirement
186	1	15% of U. S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of \$30 million
187	2	30% of U. S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of \$60 million

188 (G) The commissioner shall have the authority to adjust,
189 in response to inflation, the trust fund amounts required by
190 paragraph (E) of this subdivision.

191 (3) In addition to all of the other requirements of this
192 subsection, an insurer not domiciled in the United States or
193 its territories shall be listed on the NAIC's quarterly listing of
194 alien insurers. The commissioner may waive the requirement
195 in this subdivision or the requirements of subparagraph (ii),
196 paragraph (E), subdivision (2), subsection (d) of this section
197 may be satisfied by an insurer's possessing less than the trust
198 fund amount specified in subparagraph (ii), paragraph (E),
199 subdivision (2), subsection (d) of this section upon an
200 affirmative finding of acceptability by the commissioner if
201 the commissioner is satisfied that the placement of insurance
202 with the insurer is necessary and will not be detrimental to
203 the public and the policyholder. In determining whether
204 business may be placed with the insurer, the commissioner
205 may consider such factors as:

206 (A) The interests of the public and policyholders;

207 (B) The length of time the insurer has been authorized in
208 its domiciliary jurisdiction and elsewhere;

209 (C) Unavailability of particular coverages from
210 authorized insurers or unauthorized insurers meeting the
211 requirements of this section;

212 (D) The size of the company as measured by its assets,
213 capital and surplus, reserves, premium writings, insurance in
214 force or other appropriate criteria;

215 (E) The kinds of business the company writes, its net
216 exposure and the extent to which the company's business is
217 diversified among several lines of insurance and geographic
218 locations; and

219 (F) The past and projected trend in the size of the
220 company's capital and surplus considering such factors as
221 premium growth, operating history, loss and expense ratios,
222 or other appropriate criteria; and

223 (4) Has caused to be provided to the commissioner a copy
224 of its current annual statement certified by the insurer and an
225 actuarial opinion as to the adequacy of, and methodology used
226 to determine, the insurer's loss reserves. The statement shall
227 be provided at the same time it is provided to the insurer's
228 domicile, but in no event more than eight months after the
229 close of the period reported upon, and shall be certified as a
230 true and correct copy by an accounting or auditing firm
231 licensed in the jurisdiction of the insurer's domicile and
232 certified by a senior officer of the nonadmitted insurer as a true
233 and correct copy of the statement filed with the regulatory
234 authority in the domicile of the nonadmitted insurer. In the
235 case of an insurance exchange qualifying under paragraph (B),
236 subdivision (2) of this subsection, the statement may be an
237 aggregate combined statement of all underwriting syndicates
238 operating during the period reported; and

239 (5) In addition to meeting the requirements in
240 subdivisions (1) to (4) of this subsection an insurer shall be

241 an eligible surplus lines insurer if it appears on the most
242 recent list of eligible surplus lines insurers published by the
243 commissioner from time to time but at least annually.
244 Nothing in this subdivision shall require the commissioner to
245 place or maintain the name of any nonadmitted insurer on the
246 list of eligible surplus lines insurers.

247 (6) Notwithstanding subsection (a) of this section, only
248 that portion of any risk eligible for export for which the full
249 amount of coverage is not procurable from listed eligible
250 surplus lines insurers may be placed with any other
251 nonadmitted insurer which does not appear on the list of
252 eligible surplus lines insurers published by the commissioner
253 pursuant to subdivision (5) of this subsection but nonetheless
254 meets the requirements set forth in subdivisions (1) and (2),
255 subsection (d) of this section and any regulations of the
256 commissioner. The surplus lines licensee seeking to provide
257 coverage through an unlisted nonadmitted insurer shall make
258 a filing specifying the amounts and percentages of each risk
259 to be placed, and naming the nonadmitted insurers with
260 which placement is intended. Within thirty days after placing
261 the coverage, the surplus lines licensee shall also send written
262 notice to the insured that the insurance, or a portion thereof,
263 has been placed with the nonadmitted insurer.

264 (e) Insurance procured under this section shall be valid
265 and enforceable as to all parties.

§33-12C-7. Surplus lines tax.

1 (a) In addition to the full amount of gross premiums
2 charged by the insurer for the insurance, every person
3 licensed pursuant to section eight of this article shall collect
4 and pay to the commissioner a sum equal to four and fifty-
5 five one-hundredths percent of the gross premiums and gross
6 fees charged, less any return premiums, for surplus lines

7 insurance provided by the licensee pursuant to the license.
8 Where the insurance covers properties, risks or exposures
9 located or to be performed both in and out of this state and
10 this state is the insured's home state, the sum payable shall be
11 computed on that portion of the gross premiums allocated to
12 this state, plus an amount equal to the portion of the gross
13 premiums allocated to other states or territories on the basis
14 of the tax rates and fees applicable to properties, risks or
15 exposures located or to be performed outside of this state,
16 and less the amount of gross premiums allocated to this state
17 and returned to the insured due to cancellation of policy:
18 *Provided, That the surcharge imposed by section thirty-three,*
19 *article three of this chapter on surplus lines policies shall no*
20 *longer be effective with respect to premium attributable to*
21 *coverage under such policies for periods after June 30, 2011:*
22 *Provided, however, That twelve per cent of taxes collected*
23 *under this subsection with respect to premium attributable to*
24 *coverage under such policies after June 30, 2011, shall be*
25 *disbursed and distributed in accordance with subsection (d),*
26 *section thirty-three, article three of this chapter and eighty-*
27 *eight per cent in accordance with subdivision two, subsection*
28 *(f) of this section. The tax on any portion of the premium*
29 *unearned at termination of insurance having been credited by*
30 *the state to the licensee shall be returned to the policyholder*
31 *directly by the surplus lines licensee or through the producing*
32 *broker, if any.*

33 (b) The individual insurance producer may not:

34 (1) Pay directly or indirectly the tax or any portion
35 thereof, either as an inducement to the policyholder to
36 purchase the insurance or for any other reason; or

37 (2) Rebate all or part of the tax or the surplus lines
38 licensee's commission, either as an inducement to the
39 policyholder to purchase the insurance or for any reason.

40 (c) The surplus lines licensee may charge the prospective
41 policyholder a fee for the cost of underwriting, issuing,
42 processing, inspecting, service or auditing the policy for
43 placement with the surplus lines insurer if:

44 (1) The service is required by the surplus lines insurer;

45 (2) The service is actually provided by the individual
46 insurance producer or the cost of the service is actually
47 incurred by the surplus lines licensee; and

48 (3) The provision or cost of the service is reasonable,
49 documented and verifiable.

50 (d) The surplus lines licensee shall make a clear and
51 conspicuous written disclosure to the policyholder of:

52 (1) The total amount of premium for the policy;

53 (2) Any fee charged;

54 (3) The total amount of any fee charged; and

55 (4) The total amount of tax on the premium and fee.

56 (e) The clear and conspicuous written disclosure required
57 by subdivision (4) of this subsection is subject to the record
58 maintenance requirements of section eight of this article.

59 (f)(1) This tax is imposed for the purpose of providing
60 additional revenue for municipal policemen's and firemen's
61 pension and relief funds and additional revenue for volunteer
62 and part-volunteer fire companies and departments. This tax
63 is required to be paid and remitted, on a calendar year basis
64 and in quarterly estimated installments due and payable on or
65 before the twenty-fifth day of the month succeeding the close
66 of the quarter in which they accrued, except for the fourth

67 quarter, in respect of which taxes shall be due and payable
68 and final computation of actual total liability for the prior
69 calendar year shall be made, less credit for the three quarterly
70 estimated payments prior made, and filed with the annual
71 return to be made on or before March 1 of the succeeding
72 year. Provisions of this chapter relating to the levy,
73 imposition and collection of the regular premium tax are
74 applicable to the levy, imposition and collection of this tax to
75 the extent that the provisions are not in conflict with this
76 section.

77 (2) Except as provided in subsection (a) of this section,
78 all taxes remitted to the commissioner pursuant to
79 subdivision one of this subsection shall be paid by him or her
80 into a special account in the State Treasury, designated
81 Municipal Pensions and Protection Fund, or pursuant to
82 section eighteen-b, article twenty-two, chapter eight of this
83 code, the Municipal Pensions Security Fund, and after
84 appropriation by the Legislature, shall be distributed in
85 accordance with the provisions of subsection (c), section
86 fourteen-d, article three of this chapter. The surplus lines
87 licensee shall return to the policyholder the tax on any
88 unearned portion of the premium returned to the policyholder
89 because of cancellation of policy.

90 (g) In determining the amount of gross premiums taxable
91 in this state for a placement of surplus lines insurance
92 covering properties, risks or exposures only partially located
93 or to be performed in this state, the tax due shall be computed
94 on the portions of the premiums which are attributable to
95 properties, risks or exposures located or to be performed in
96 this state and which relates to the kinds of insurance being
97 placed as determined by reference to an appropriate
98 allocation table.

99 (1) If a policy covers more than one classification:

100 (A) For any portion of the coverage identified by a
101 classification on the allocation schedule, the tax shall be
102 computed by using the allocation schedule for the
103 corresponding portion of the premium;

104 (B) For any portion of the coverage not identified by a
105 classification on the allocation schedule, the tax shall be
106 computed by using an alternative equitable method of
107 allocation for the property or risk;

108 (C) For any portion of the coverage where the premium
109 is indivisible, the tax shall be computed by using the method
110 of allocation which pertains to the classification describing
111 the predominant coverage.

112 (2) If the information provided by the surplus lines
113 licensee is insufficient to substantiate the method of
114 allocation used by the surplus lines licensee, or if the
115 commissioner determines that the licensee's method is
116 incorrect, the commissioner shall determine the equitable and
117 appropriate amount of tax due to this state as follows:

118 (A) By use of the allocation schedule where the risk is
119 appropriately identified in the schedule;

120 (B) Where the allocation schedule does not identify a
121 classification appropriate to the coverage, the commissioner
122 may give significant weight to documented evidence of the
123 underwriting bases and other criteria used by the insurer.
124 The commissioner may also consider other available
125 information to the extent sufficient and relevant, including
126 the percentage of the insured's physical assets in this state,
127 the percentage of the insured's sales in this state, the
128 percentage of income or resources derived from this state,
129 and the amount of premium tax paid to another jurisdiction
130 for the policy.

131 (h) The commissioner is authorized to participate in a
132 clearinghouse established through NIMA or in a similar
133 allocation procedure for the purpose of collecting and
134 disbursing to signatory states any funds collected pursuant to
135 this section that are allocable to properties, risks or exposures
136 located or to be performed outside of this state: *Provided,*
137 That twelve per cent of any moneys received from a
138 clearinghouse or through a similar allocation procedure is
139 subject to the provisions of subsection (d), section thirty-
140 three, article three of this chapter and eighty-eight per cent of
141 such moneys is subject to the provisions of subdivision (2),
142 subsection (f) of this section: *Provided, however,* That to the
143 extent other states where portions of the properties, risks or
144 exposures reside have failed to enter into NIMA or a similar
145 allocation procedure with this state, the net premium tax
146 collected shall be retained by this state and shall be disbursed
147 and distributed in the same manner as moneys received
148 through a clearinghouse or similar allocation procedure.

149 (i) Collection of tax.

150 If the tax owed by a surplus lines licensee under this
151 section has been collected and is not paid within the time
152 prescribed, the same shall be recoverable in a suit brought by
153 the commissioner against the surplus lines licensee. The
154 commissioner may charge interest for any unpaid tax, fee,
155 financial assessment or penalty, or portion thereof: *Provided,*
156 That interest may not be charged on interest. Interest shall be
157 calculated using the annual rates which are established by the
158 Tax Commissioner pursuant to section seventeen-a of article
159 ten, chapter eleven of this code and shall accrue daily.

§33-12C-8. Surplus lines licenses.

1 (a) No person shall procure a contract of surplus lines
2 insurance with a nonadmitted insurer for an insured whose
3 home state is West Virginia unless the person possesses a

4 current surplus lines insurance license issued by the
5 commissioner.

6 (b) The commissioner may issue a surplus lines license
7 to a qualified holder of a current property and casualty
8 individual insurance producer's license but only when the
9 individual insurance producer has:

10 (1) Remitted the \$200 annual fee to the commissioner, of
11 which all fees so collected are to be used for the purposes set
12 forth in section thirteen, article three of this chapter;

13 (2) Submitted a completed license application on a form
14 supplied by the commissioner;

15 (3) Passed a qualifying examination approved by the
16 commissioner, except that all holders of a license prior to the
17 effective date of this article shall be deemed to have passed
18 such an examination; and

19 (4) If a resident, established and continues to maintain an
20 office in this state.

21 (c) If the commissioner determines that a surplus lines
22 licensee of another state is competent, trustworthy and meets
23 the licensing requirements of this state, the commissioner
24 may, in his or her discretion, issue a nonresident surplus lines
25 license. A license shall not be issued unless the prospective
26 licensee furnishes the commissioner with the name and
27 address of a resident of this state upon whom notices or
28 orders of the commissioner or process affecting the
29 nonresident surplus lines licensee may be served. The
30 licensee shall promptly notify the commissioner in writing of
31 every change in its designated agent for service of process,
32 and the change shall not become effective until
33 acknowledged by the commissioner.

34 (d) Each surplus lines license shall expire at midnight on
35 May 31 next following the date of issuance, and an
36 application for renewal shall be filed before May 1 of each
37 year upon payment of the annual fee and compliance with
38 other provisions of this article. A surplus lines licensee who
39 fails to apply for renewal of the license before May 1 shall
40 pay a penalty of \$100 and be subject to penalties provided by
41 law before the license will be renewed.

CHAPTER 100

**(Com. Sub. for S. B. 408 - By Senators Minard,
Foster, Jenkins, Kessler (Acting President),
Chafin and Stollings)**

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9, all relating generally to the establishment of a West Virginia Health Benefit Exchange; setting forth purpose; defining terms; providing for the establishment of the West Virginia Health Benefit Exchange; establishing the governing board of directors; providing for membership on the board of directors; setting forth meeting requirements of the board of directors; allowing the board of directors to hire an executive director and appropriate staff; exempting employees from classified service; providing for an annual report by the board of directors; setting forth the functions of the board; outlining the board's duties and

authority; providing for the response of the board in the event of reduction of federal funding or legislative or judicial invalidation of federal act; authorizing emergency and legislative rulemaking; establishing a special revenue account; training; purchasing exemption; and authorizing assessment of fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9, all to read as follows:

ARTICLE 16G. WEST VIRGINIA HEALTH BENEFIT EXCHANGE ACT.

§33-16G-1. Purpose.

1 The purpose of this article is to establish a West Virginia
2 Health Benefit Exchange to facilitate the purchase and sale of
3 qualified health plans in the individual market in this state
4 and a Small Business Health Options Program within the
5 exchange to assist qualified small employers in this state in
6 facilitating the enrollment of their employees in qualified
7 health plans.

§33-16G-2. Definitions.

1 For purposes of this article:

2 (a) “Board” means the board established in section four
3 of this article.

4 (b) “Commissioner” means the West Virginia Insurance
5 Commissioner.

6 (c) "Exchange" means the West Virginia Health Benefit
7 Exchange established pursuant to section three of this article.

8 (d) "Federal Act" means the Federal Patient Protection
9 and Affordable Care Act (Public Law 111-148), as amended
10 by the federal Health Care and Education Reconciliation Act
11 of 2010 (Public Law 111-152), and any amendments thereto,
12 or regulations or guidance issued thereunder.

13 (e) "Health carrier" or "carrier" means an entity subject
14 to the insurance laws of this state, or subject to the
15 jurisdiction of the commissioner, that contracts or offers to
16 contract to provide, deliver, arrange for, pay for, or reimburse
17 any of the costs of health care services, including a sickness
18 and accident insurance company, a health maintenance
19 organization, a nonprofit hospital and health service
20 corporation, or any other entity providing a plan of health
21 insurance, health benefits or health services.

22 (f) "Secretary" means the Secretary of the United States
23 Department of Health and Human Services.

24 (g) "SHOP Exchange" means the Small Business Health
25 Options Program established under this article.

26 (h) "Small employer" means an employer that employed
27 an average of not more than fifty employees during the
28 preceding calendar year.

§33-16G-3. Establishment of exchange.

1 (a) There is established within the Offices of the
2 Insurance Commissioner an entity known as the West
3 Virginia Health Benefit Exchange. This is a governmental
4 entity of the state.

5 (b) The exchange shall pursue available federal funding
6 for operation of the exchange and shall promulgate rules
7 necessary to obtain federal recognition of the exchange as a
8 certified exchange under the Federal Act.

9 (c) The exchange may accept gifts, grants and bequests,
10 contract with other persons, and enter into memoranda of
11 understanding with other governmental agencies to carry out
12 any of its functions, including agreements with other states to
13 perform joint administrative functions. The provisions of
14 article three, chapter five-a of this code relating to the
15 Purchasing Division of the Department of Administration do
16 not apply to these contracts: *Provided*, That these contracts
17 shall be awarded on a competitive basis. The exchange may
18 not enter into contracts with any health insurance carrier or
19 an affiliate of a health insurance carrier.

20 (d) The exchange may enter into information-sharing
21 agreements with federal and state agencies and other state
22 exchanges to carry out its responsibilities under this article,
23 provided such agreements include adequate protections with
24 respect to the confidentiality of the information to be shared
25 and comply with all state and federal laws and regulations.

**§33-16G-4. Duties of exchange; decrease in funding or
invalidation of the Federal Act.**

1 (a) In carrying out the duties under this article, the
2 exchange shall:

3 (1) Consult with stakeholders, including but not limited
4 to consumers, carriers, producers, providers and advocates
5 for hard to reach populations; and

6 (2) Meet the following financial integrity requirements:

7 (A) Keep an accurate accounting of all activities, receipts
8 and expenditures and annually submit to the secretary, the
9 Governor, the commissioner and the Legislature a report
10 concerning such accountings;

11 (B) Fully cooperate with any investigation conducted by
12 the secretary pursuant to the secretary's authority under the
13 Federal Act and allow the secretary, in coordination with the
14 Inspector General of the United States Department of Health
15 and Humans Services, to:

16 (i) Investigate the affairs of the exchange;

17 (ii) Examine the properties and records of the exchange;
18 and

19 (iii) Require periodic reports in relation to the activities
20 undertaken by the exchange; and

21 (C) In carrying out its activities under this article, not use
22 any funds intended for the administrative and operational
23 expenses of the exchange for staff retreats, promotional
24 giveaways, excessive executive compensation or promotion
25 of federal or state legislative and regulatory modifications.

26 (b) (1) The implementation of the provisions of this
27 article, other than this subsection, section three of this article,
28 and section five of this article, shall be contingent on a
29 determination by the board that sufficient financial resources
30 exist or will exist in the fund, which determination shall be
31 based on, at a minimum:

32 (A) Financial projections identifying that sufficient
33 resources exist or will exist in the fund to implement the
34 exchange; and

35 (B) A comparison of the projected resources available to
36 support the exchange and the projected costs of activities
37 required by this article.

38 (2) In the event any portion of the Federal Act or of any
39 regulation or other guidance issued thereunder is legislatively
40 or judicially invalidated and rendered of no effect in this
41 state, the board shall immediately issue a bulletin setting
42 forth its legal opinion as to the effect of such legislative or
43 judicial action on the legal status of the corresponding
44 provisions of such act, regulation or guidance as set forth in
45 this article or in rules promulgated hereunder; the board shall
46 also issue recommendations to the Legislature for
47 amendments to this article necessitated by such judicial or
48 legislative action.

**§33-16G-5. Establishment of governing board of the exchange;
reports; training.**

1 (a) The exchange shall operate subject to the supervision
2 and control of a governing board. The powers conferred
3 upon the board by this article and the carrying out of its
4 purposes and duties shall be considered to be essential
5 governmental functions and for a public purpose. The
6 Governor shall appoint a chairperson of the board from the
7 membership set forth in subsection (b) of this section, with
8 the advice and consent of the Senate.

9 (b) The board shall be composed of the following
10 members:

11 (1) Four voting *ex officio* members: The Commissioner;
12 the Commissioner of the West Virginia Bureau for Medical
13 Services; the Director of the West Virginia Children's Health
14 Insurance Program; and the Chair of the West Virginia

15 Health Care Authority. *Ex officio* members may designate a
16 representative to serve in his or her place;

17 (2) Four persons appointed by the Governor with advice
18 and consent of the Senate, each to represent the interests of
19 one of the following groups: Individual health care
20 consumers; small employers; organized labor; and insurance
21 producers;

22 (3) One person to represent the interests of payors who
23 is selected by majority vote of an advisory group
24 comprising representatives of the ten carriers with the
25 highest health insurance premium volume in this state in
26 the preceding calendar year, as certified by the
27 commissioner. Beginning in 2014, the advisory group
28 shall be comprised only of representatives of those carriers
29 that are offering qualified plans in the exchange regardless
30 of premium volume: *Provided*, That the member selected
31 pursuant to this paragraph may not be an employee of a
32 carrier or an affiliate of a carrier eligible to select such
33 member; and

34 (4) One person to represent the interests of health care
35 providers selected by the majority vote of an advisory group
36 comprised of a representative of each of the following: West
37 Virginia Association of Free Clinics, West Virginia Hospital
38 Association, West Virginia State Medical Association, West
39 Virginia Primary Care Association, West Virginia Nurses
40 Association, West Virginia Society of Osteopathic Medicine,
41 West Virginia Academy of Family Physicians, West Virginia
42 Pharmacists Association, West Virginia Dental Association,
43 West Virginia Behavioral Health Care Providers, West
44 Virginia Chiropractic Society, West Virginia Optometric
45 Association, West Virginia Podiatric Medical Association,
46 West Virginia Physical Therapists Association, and a full-
47 time health officer of a county or regional health department

48 selected by all full-time health officers of all county or
49 regional health departments.

50 (5) Selection of board members pursuant to paragraphs
51 (3) and (4) of this subdivision shall be conducted in a manner
52 and at such times designated by the chair of the board.

53 (6) Each member appointed pursuant to paragraph (2) of
54 this section or selected pursuant to paragraph (3) or (4) of this
55 subsection shall serve a term of four years and is eligible to
56 be reappointed, except that the term of each of the four
57 persons initially appointed pursuant to paragraph (2) of this
58 section to represent the groups listed therein shall be as
59 follows: Individual consumer, one year; small employers,
60 two years; labor, three years; and producers, four years. Any
61 appointed or selected member whose term has expired may
62 continue to serve until either he or she has been reappointed
63 or his or her successor has been duly appointed or selected.

64 (c) Board members may be removed by the Governor for
65 cause.

66 (d) Members of the board are not entitled to
67 compensation for services performed as members but are
68 entitled to reimbursement for all reasonable and necessary
69 expenses actually incurred in the performance of their duties.

70 (e) Seven members of the board constitute a quorum, and
71 the affirmative vote of six members is necessary for any
72 action taken by vote of the board. No vacancy in the
73 membership of the board impairs the rights of a quorum by
74 such vote to exercise all the rights and perform all the duties
75 of the board.

76 (f) The board may employ an executive director who has
77 overall management responsibility for the exchange and such

78 employees as may be necessary. The executive director and
79 employees of the exchange shall receive a salary as provided
80 by the board. The executive director and all employees of the
81 board are exempt from the classified service and not subject
82 to the procedures and protections provided by article two,
83 chapter six-c of this code and article six, chapter twenty-nine
84 of this code;

85 (g) The board may establish *ad hoc* or standing advisory
86 committees of consumers and other stakeholder groups or
87 interested parties to study particular policy issues and to
88 advise the board.

89 (h) The board shall make an annual report to the
90 Governor and also file it with the Joint Committee on
91 Government and Finance. The report shall summarize the
92 activities of the exchange in the preceding calendar year.

93 (i) Neither the board nor its employees are liable for any
94 obligations of the exchange. No member of the board or
95 employee of the exchange is liable and no cause of action of
96 any nature may arise against them for any act or omission
97 related to the performance of their powers and duties under
98 this article unless the act or omission constitutes willful or
99 wanton misconduct. The board may provide in its bylaws or
100 rules for indemnification of, and legal representation for, its
101 members and employees.

102 (j) Members of the board shall receive governmental
103 ethics training within the first six months of being appointed.
104 Additional ethics training is required for board members at
105 least every two years thereafter.

§33-16G-6. Funding; publication of costs.

1 (a) On and after July 1, 2011, the board is authorized to
2 assess fees on health carriers selling qualified dental plans or
3 health benefit plans in this state, including health benefit
4 plans sold outside the exchange, and shall establish the
5 amount of such fees and the manner of the remittance and
6 collection of such fees in legislative rules. Fees shall be
7 based on premium volume of the qualified dental plans or
8 health benefit plans sold in this state and shall be for the
9 purpose of operation of the exchange.

10 (b) The exchange shall publish the average costs of
11 licensing, regulatory fees and any other payments required by
12 the exchange, and the administrative costs of the exchange,
13 on an Internet website to educate consumers on such costs.
14 This information shall include information on moneys lost to
15 waste, fraud and abuse.

§33-16G-7. Rules.

1 The board may promulgate emergency rules and propose
2 legislative rules for adoption by the Legislature pursuant to
3 the provisions of article three, chapter twenty-nine-a of this
4 code to implement the provisions of this article. Emergency
5 or legislative rules promulgated under this section may not
6 conflict with or prevent the application of the federal act or
7 regulations promulgated by the secretary under such act.

§33-16G-8. Relation to other laws.

1 Nothing in this article, and no action taken by the
2 exchange pursuant to this article, preempts or supersedes the
3 authority of the commissioner to regulate the business of
4 insurance within this state and, except as expressly provided
5 to the contrary in this article, all health carriers offering
6 qualified health plans in this state shall comply fully with all

7 applicable health insurance laws of this state and orders
8 issued by the commissioner.

§33-16G-9. Special revenue account created.

1 (a) There is hereby created a special revenue account in
2 the State Treasury, designated the “West Virginia Health
3 Benefits Exchange Fund”, which shall be an interest-bearing
4 account and may be invested in the manner permitted by
5 article six, chapter twelve of this code, with the interest
6 income a proper credit to the fund, unless otherwise
7 designated in law. The fund shall be administered by the
8 board and used to pay all proper costs incurred in
9 implementing the provisions of this article. Moneys
10 deposited into this account are available for expenditure as
11 the board may direct in accordance with the provisions of this
12 article. Expenditures shall be for the purposes set forth in
13 this article, are authorized from collections and do not revert
14 to the General Fund.

15 (b) The following shall be paid into this account:

16 (1) All funds from the federal government received and
17 dedicated to or otherwise able to be used for the purposes of
18 this article;

19 (2) All other payments, gifts, grants, bequests or income
20 from any source;

21 (3) Fees on health carriers established by the board; and

22 (4) Appropriations from the Legislature.

CHAPTER 101

**(Com. Sub. for S. B. 253 - By Senators
Minard and Jenkins)**

[Passed March 12, 2011; in effect July 1, 2012.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-27-3a and §33-27-6a, all relating to insurance holding company systems; defining terms; excluding certain investments from determination of adequacy of surplus; requiring notice and other information with regard to divestiture or acquisition of a controlling interest; changing public hearing requirements; providing standards for review of acquisition request by commissioner; establishing process for consolidated hearings; providing standards and procedures for certain acquisitions not otherwise covered; providing requirements for insurers; expanding examinations and types of information that may be demanded and reviewed by the commissioner, including compelling production; providing for management of domestic insurers subject to registration; providing for establishment of supervisory colleges; providing additional confidentiality measures; providing for payments of costs, expenses and mileage; providing for fines, orders and penalties; and authorizing emergency rules.

Be it enacted by the Legislature of West Virginia:

That §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-27-3a and §33-27-6a, all to read as follows:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

1 As used in this article:

2 (a) An “affiliate” of or person “affiliated” with a specific
3 person is a person that, directly or indirectly through one or
4 more intermediaries, controls or is controlled by or is under
5 common control with the person specified.

6 (b) “Commissioner” means the West Virginia Insurance
7 Commissioner, his or her deputies or the West Virginia
8 offices of the Insurance Commissioner, as appropriate.

9 (c) “Control” (including the terms “controlling”,
10 “controlled by” and “under common control with”) means the
11 possession, direct or indirect, of the power to direct or cause
12 the direction of the management and policies of a person,
13 whether through the ownership of voting securities, by
14 contract other than a commercial contract for goods or
15 nonmanagement services or otherwise, unless the power is
16 the result of an official position with or corporate office held
17 by the person. Control shall be presumed to exist if any
18 person, directly or indirectly, owns, controls, holds with the
19 power to vote or holds proxies representing ten percent or
20 more of the voting securities of any other person. This
21 presumption may be rebutted by a showing made in the
22 manner provided by subsection (k), section four of this article
23 that control does not exist in fact. The commissioner may

24 determine after furnishing all persons in interest notice and
25 opportunity to be heard and making specific findings of fact
26 to support the determination that control exists in fact
27 notwithstanding the absence of a presumption to that effect.

28 (d) "Enterprise risk" means any activity, circumstance,
29 event or series of events involving one or more affiliates of
30 an insurer that, if not remedied promptly, is likely to have a
31 material adverse effect upon the financial condition or
32 liquidity of the insurer or its insurance holding company
33 system as a whole, including, but not limited to, anything that
34 would cause the insurer's risk-based capital to fall into
35 company action level, as set forth in article forty of this
36 chapter, or would cause the insurer to be in hazardous
37 financial condition, as set forth in article thirty-four of this
38 chapter.

39 (e) "Insurance holding company system" consists of two
40 or more affiliated persons, one or more of which is an
41 insurer.

42 (f) "Insurer" means any person or persons or corporation,
43 partnership or company authorized by the laws of this state
44 to transact the business of insurance in this state, except that
45 it shall not include agencies, authorities or instrumentalities
46 of the United States, its possessions and territories, the
47 commonwealth of Puerto Rico, the District of Columbia or a
48 state or political subdivision of a state.

49 (g) "Person" means an individual, a corporation, a limited
50 liability company, a partnership, an association, a joint-stock
51 company, a trust, an unincorporated organization, a
52 depository institution or any similar entity or any
53 combination of the foregoing acting in concert, but does not
54 include any joint venture partnership exclusively engaged in
55 owning, managing, leasing or developing real or tangible
56 personal property.

57 (h) A “security holder” of a specified person is one who
58 owns any security of such person, including common stock,
59 preferred stock, debt obligations and any other security
60 convertible into or evidencing the right to acquire any of the
61 foregoing.

62 (i) A “subsidiary” of a specified person is an affiliate
63 controlled by such person directly or indirectly through one
64 or more intermediaries.

65 (j) “Voting security” includes any security convertible
66 into or evidencing a right to acquire a voting security.

**§33-27-2a. Subsidiaries of insurers; authorization; investment
authority; exemptions; qualifications; cessation
of controls.**

1 (a) *Authorization.* -- Any domestic insurer, either by itself
2 or in cooperation with one or more persons, may organize or
3 acquire one or more subsidiaries engaged in the following
4 kinds of business with the commissioner’s prior approval:

5 (1) Any kind of insurance business authorized by the
6 jurisdiction in which it is incorporated;

7 (2) Acting as an insurance agent for its parent or for any
8 of its parent’s insurer subsidiaries;

9 (3) Investing, reinvesting or trading in securities for its
10 own account, that of its parent, any subsidiary of its parent,
11 or any affiliate or subsidiary;

12 (4) Management of any investment company subject to
13 or registered pursuant to the Investment Company Act of
14 1940, as amended, including related sales and services;

15 (5) Acting as a broker-dealer subject to or registered
16 pursuant to the Securities Exchange Act of 1934, as
17 amended;

18 (6) Rendering investment advice to governments,
19 government agencies, corporations or other organizations or
20 groups;

21 (7) Rendering other services related to the operations of
22 an insurance business, including, but not limited to, actuarial,
23 loss prevention, safety engineering, data processing,
24 accounting, claims, appraisal and collection services;

25 (8) Ownership and management of assets which the
26 parent corporation could itself own or manage;

27 (9) Acting as administrative agent for a governmental
28 instrumentality which is performing an insurance function;

29 (10) Financing of insurance premiums, agents and other
30 forms of consumer financing;

31 (11) Any other business activity determined by the
32 commissioner to be reasonably ancillary to an insurance
33 business; and

34 (12) Owning a corporation or corporations engaged or
35 organized to engage exclusively in one or more of the
36 businesses specified in this section;

37 (b) *Additional investment authority.* -- In addition to
38 investments in common stock, preferred stock, debt
39 obligations and other securities permitted under any other
40 provision of this chapter, a domestic insurer may also with
41 the commissioner's prior approval:

42 (1) Invest in common stock, preferred stock, debt
43 obligations and other securities of one or more subsidiaries,

44 amounts which do not exceed the lesser of ten percent of the
45 insurer's assets or fifty percent of the insurer's surplus as
46 regards policyholders: *Provided*, That after the investments,
47 the insurer's surplus as regards policyholders will be
48 reasonable in relation to the insurer's outstanding liabilities
49 and adequate to its financial needs. In calculating the amount
50 of the investments, investments in domestic or foreign
51 insurance subsidiaries shall be excluded and there shall be
52 included:

53 (A) Total net moneys or other consideration expended
54 and obligations assumed in the acquisition or formation of a
55 subsidiary, including all organizational expenses and
56 contributions to capital and surplus of the subsidiary whether
57 or not represented by the purchase of capital stock or
58 issuance of other securities; and

59 (B) All amounts expended in acquiring additional
60 common stock, preferred stock, debt obligations and other
61 securities, and all contributions to the capital or surplus, of a
62 subsidiary subsequent to its acquisition or formation;

63 (2) Invest any amount in common stock, preferred stock,
64 debt obligations and other securities of one or more
65 subsidiaries engaged or organized to engage exclusively in
66 the ownership and management of assets authorized as
67 investments for the insurer: *Provided*, That each subsidiary
68 agrees to limit its investments in any asset so that the
69 investments will not cause the amount of the total investment
70 of the insurer to exceed any of the investment limitations
71 specified in subdivision (1) of this subsection or in article
72 eight of this chapter applicable to the insurer. For the
73 purpose of this subdivision, "the total investment of the
74 insurer" includes:

75 (A) Any direct investment by the insurer in an asset; and

76 (B) The insurer's proportionate share of any investment
77 in an asset by any subsidiary of the insurer, which shall be
78 calculated by multiplying the amount of the subsidiary's
79 investment by the percentage of the ownership of the
80 subsidiary.

81 (3) With the approval of the commissioner, invest any
82 greater amount in common stock, preferred stock, debt
83 obligations or other securities of one or more subsidiaries:
84 *Provided*, That after investment the insurer's surplus as
85 regards policyholders will be reasonable in relation to the
86 insurer's outstanding liabilities and adequate to its financial
87 needs.

88 (c) *Exemption from investment restrictions.* --
89 Investments in common stock, preferred stock, debt
90 obligations or other securities of subsidiaries made pursuant
91 to subsection (b) of this section are not subject to any of the
92 otherwise applicable restrictions or prohibitions contained in
93 this chapter applicable to the investments of insurers.

94 (d) *Qualification of investment; when determined.* --
95 Whether any investment made pursuant to subsection (b) of
96 this section meets the applicable requirements of that
97 subsection is to be determined before the investment is made,
98 by calculating the applicable investment limitations as though
99 the investment had already been made, taking into account
100 the then outstanding principal balance on all previous
101 investments in debt obligations, and the value of all previous
102 investments in equity securities as of the day they were made,
103 net of any return of capital invested, not including dividends.

104 (e) *Cessation of control.* -- If an insurer ceases to control
105 a subsidiary, it shall dispose of any investment in the
106 subsidiary made pursuant to this section within three years
107 from the time of the cessation of control or within any further
108 time prescribed by the commissioner, unless at any time after

109 the investment was made, the investment meets the
110 requirements for investment under any other provision of this
111 chapter and the insurer has notified the commissioner of
112 compliance with the provisions of this chapter.

§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

1 (a) *Filing requirements.* --

2 (1) No person other than the issuer may make a tender
3 offer for or a request or invitation for tenders of, or enter into
4 any agreement to exchange securities for, seek to acquire or
5 acquire, in the open market or otherwise, any voting security
6 of a domestic insurer if, after the consummation thereof, the
7 person would, directly or indirectly (or by conversion or by
8 exercise of any right to acquire) be in control of the insurer and
9 a person shall not enter into an agreement to merge with or
10 otherwise to acquire control of a domestic insurer or any
11 person controlling a domestic insurer unless at the time the
12 offer, request or invitation is made or the agreement is entered
13 into, or prior to the acquisition of the securities if no offer or
14 agreement is involved, the person has filed with the
15 commissioner and has sent to the insurer and, to the extent
16 permitted by applicable federal laws, rules and regulations, the
17 insurer has sent to its shareholders a statement containing the
18 information required by this section and the offer, request,
19 invitation, agreement or acquisition has been approved by the
20 commissioner in the manner hereinafter prescribed.

21 (2) For purposes of this section, any controlling person of
22 a domestic insurer seeking to divest its controlling interest in
23 the domestic insurer, in any manner, shall file with the

24 commissioner, with a copy to the insurer, confidential notice
25 of its proposed divestiture at least thirty days prior to the
26 cessation of control. The commissioner shall determine those
27 instances in which the party or parties seeking to divest or to
28 acquire a controlling interest in an insurer will be required to
29 file for and obtain approval of the transaction. The
30 information shall remain confidential until the conclusion of
31 the transaction unless the commissioner, in his or her
32 discretion, determines that confidential treatment will
33 interfere with enforcement of this section. If the statement
34 referred to in subsection (a) of this section is otherwise filed,
35 this subdivision does not apply.

36 (3) With respect to a transaction subject to this section,
37 the acquiring person must also file a preacquisition
38 notification with the commissioner, which shall contain the
39 information set forth in subdivision (1), subsection (c),
40 section three-a of this article. A failure to file the notification
41 may subject the person to penalties specified in subdivision
42 (3), subsection (e), section three-a of this article.

43 (4) For purposes of this section, a “domestic insurer”
44 includes any person controlling a domestic insurer unless the
45 person as determined by the commissioner is either directly
46 or through its affiliates primarily engaged in business other
47 than the business of insurance. For purposes of this section,
48 “person” does not include any securities broker holding, in
49 the usual and customary broker’s function, less than twenty
50 percent of the voting securities of an insurance company or
51 of any person that controls an insurance company.

52 (b) *Content of statement.* -- The statement to be filed with
53 the commissioner hereunder shall be made under oath or
54 affirmation and shall contain the following information:

55 (1) The name and address of each person by whom or on
56 whose behalf the merger or other acquisition of control

57 referred to in subsection (a) of this section is to be effected
58 (hereinafter called "acquiring party"); and

59 (A) If such person is an individual, his or her principal
60 occupation and all offices and positions held during the past
61 five years and any conviction of crimes other than minor
62 traffic violations during the past ten years; or

63 (B) If the person is not an individual, a report of the
64 nature of its business operations during the past five years or
65 for such lesser period as the person and any predecessors
66 thereof shall have been in existence; an informative
67 description of the business intended to be done by the person
68 and the person's subsidiaries; and a list of all individuals who
69 are or who have been selected to become directors or
70 executive officers of the person, or who perform or will
71 perform functions appropriate to those positions. The list
72 shall include for each individual the information required by
73 paragraph (2) of this subdivision;

74 (2) The source, nature and amount of the consideration
75 used or to be used in effecting the merger or other acquisition
76 of control, a description of any transaction wherein funds
77 were or are to be obtained for any such purpose, including
78 any pledge of the insurer's stock or the stock of any of its
79 subsidiaries or controlling affiliates, and the identity of
80 persons furnishing such consideration: *Provided*, That where
81 a source of the consideration is a loan made in the lender's
82 ordinary course of business, the identity of the lender shall
83 remain confidential if the person filing the statement so
84 requests;

85 (3) Fully audited financial information as to the earnings
86 and financial condition of each acquiring party for the
87 preceding five fiscal years of each acquiring party (or for
88 such lesser period as each acquiring party and any
89 predecessors thereof shall have been in existence) and similar

90 unaudited information as of a date not earlier than ninety
91 days prior to the filing of the statement;

92 (4) Any plans or proposals which each acquiring party
93 may have to liquidate the insurer, to sell its assets or merge
94 or consolidate it with any person or to make any other
95 material change in its business or corporate structure or
96 management;

97 (5) The number of shares of any security referred to in
98 subsection (a) of this section which each acquiring party
99 proposes to acquire and the terms of the offer, request,
100 invitation, agreement or acquisition referred to in that
101 subsection and a statement as to the method by which the
102 fairness of the proposal was arrived at;

103 (6) The amount of each class of any security referred to
104 in subsection (a) of this section which is beneficially owned
105 or concerning which there is a right to acquire beneficial
106 ownership by each acquiring party;

107 (7) A full description of any contracts, arrangements or
108 understanding with respect to any security referred to in
109 subsection (a) of this section in which any acquiring party is
110 involved, including, but not limited to, transfer of any of the
111 securities, joint ventures, loan or option arrangements, puts
112 or calls, guarantees of loans, guarantees against loss or
113 guarantees of profits, division of losses or profits or the
114 giving or withholding of proxies. The description shall
115 identify the persons with whom such contracts, arrangements
116 or understandings have been entered into;

117 (8) A description of the purchase of any security referred
118 to in subsection (a) of this section during the twelve calendar
119 months preceding the filing of the statement by any acquiring
120 party, including the dates of purchase, names of the
121 purchasers and consideration paid or agreed to be paid
122 therefor;

123 (9) A description of any recommendations to purchase
124 any security referred to in subsection (a) of this section made
125 during the twelve calendar months preceding the filing of the
126 statement by an acquiring party or by anyone based upon
127 interviews or at the suggestion of the acquiring party;

128 (10) Copies of all tender offers for, requests or invitations
129 for tenders of, exchange offers for and agreements to acquire
130 or exchange any securities referred to in subsection (a) of this
131 section and, if distributed, of additional soliciting material
132 relating thereto;

133 (11) The terms of any agreement, contract or
134 understanding made with any broker-dealer as to solicitation
135 of securities referred to in subsection (a) of this section for
136 tender and the amount of any fees, commissions or other
137 compensation to be paid to broker-dealers with regard
138 thereto;

139 (12) An agreement by the person required to file the
140 statement referred to in subsection (a) of this section that it
141 will provide the annual report, specified in subsection (l),
142 section four of this article, for so long as control exists;

143 (13) An acknowledgment by the person required to file
144 the statement referred to in subsection (a) of this section that
145 the person and all subsidiaries within its control in the
146 insurance holding company system will provide information
147 to the commissioner upon request as necessary to evaluate
148 enterprise risk to the insurer; and

149 (14) Any additional information as the commissioner
150 may by rule prescribe as necessary or appropriate for the
151 protection of policyholders and security holders of the insurer
152 or in the public interest.

153 (c) If the person required to file the statement referred to
154 in subsection (a) of this section is a partnership, limited

155 partnership, syndicate or other group, the commissioner may
156 require that the information called for by subdivisions (1)
157 through (14), inclusive, subsection (b) of this section shall be
158 given with respect to each partner of the partnership or
159 limited partnership, each member of the syndicate or group
160 and each person who controls the partner or member. If any
161 partner, member or person is a corporation or the person
162 required to file the statement referred to in subsection (a) of
163 this section is a corporation, the commissioner may require
164 that the information called for by subdivisions (1) through
165 (14), inclusive, subsection (b) of this section shall be given
166 with respect to the corporation and each person who is
167 directly or indirectly the beneficial owner of more than ten
168 percent of the outstanding voting securities of the
169 corporation.

170 (d) If any material change occurs in the facts set forth in
171 the statement filed with the commissioner and sent to the
172 insurer pursuant to this section, an amendment setting forth
173 such change, together with copies of all documents and other
174 material relevant to such change, shall be filed with the
175 commissioner and sent to the insurer within two business
176 days after the person learns of the change. The insurer shall
177 send the amendment to its shareholders.

178 (e) *Alternative filing materials.* -- If any offer, request,
179 invitation, agreement or acquisition referred to in subsection
180 (a) of this section is proposed to be made by means of a
181 registration statement under the Securities Act of 1933 or in
182 circumstances requiring the disclosure of similar information
183 under the Securities Exchange Act of 1934 or under a state
184 law requiring similar registration or disclosure, the person
185 required to file the statement referred to in that subsection
186 may utilize such documents in furnishing the information
187 called for by that statement.

188 (f) (1) *Approval by commissioner; hearings.* -- The
189 commissioner shall approve any merger or other acquisition

190 of control referred to in subsection (a) of this section unless,
191 after a public hearing thereon, he or she finds that:

192 (A) After the change of control the domestic insurer
193 referred to in subsection (a) of this section would not be able
194 to satisfy the requirements for the issuance of a license to
195 write the line or lines of insurance for which it is presently
196 authorized;

197 (B) The effect of the merger or other acquisition of
198 control would be substantially to lessen competition in
199 insurance in this state or tend to create a monopoly therein.
200 In applying the competitive standard in this subdivision:

201 (i) The informational requirements of subdivision (1),
202 subsection (c), section three-a of this article and the standards
203 of subdivision (2), subsection (d), section three-a of this
204 article apply;

205 (ii) The merger or other acquisition may not be
206 disapproved if the commissioner finds that any of the
207 situations meeting the criteria provided by subdivision (3),
208 subsection (d), section three-a of this article exist; and

209 (iii) The commissioner may condition the approval of the
210 merger or other acquisition on the removal of the basis of
211 disapproval within a specified period of time.

212 (C) The financial condition of any acquiring party is such
213 as might jeopardize the financial stability of the insurer or
214 prejudice the interest of its policyholders or the interests of
215 any remaining security holders who are unaffiliated with the
216 acquiring party;

217 (D) The plans or proposals which the acquiring party has
218 to liquidate the insurer, sell its assets or consolidate or merge
219 it with any person or to make any other material change in its

220 business or corporate structure or management are unfair and
221 unreasonable to policyholders of the insurer and not in the
222 public interest;

223 (E) The competence, experience and integrity of those
224 persons who would control the operation of the insurer are
225 such that it would not be in the interest of policyholders of
226 the insurer and of the public to permit the merger or other
227 acquisition of control; or

228 (F) The acquisition is likely to be hazardous or
229 prejudicial to the insurance-buying public.

230 (2) The public hearing required by this section shall be
231 held within thirty days after the statement required by
232 subsection (a) of this section is filed, and at least twenty
233 days' notice thereof shall be given by the commissioner to
234 the person filing the statement. Not less than seven days'
235 notice of the public hearing shall be given by the person
236 filing the statement to the insurer and to any other persons as
237 may be designated by the commissioner. The commissioner
238 shall make a determination within the sixty-day period
239 preceding the effective date of the proposed transaction. At
240 the hearing, the person filing the statement, the insurer, any
241 person to whom notice of hearing was sent, and any other
242 person whose interest may be affected has the right to present
243 evidence, examine and cross-examine witnesses, and offer
244 oral and written arguments and in connection therewith shall
245 be entitled to conduct discovery proceedings in the same
246 manner as is presently allowed in the circuit courts of this
247 state: *Provided*, That all discovery proceedings shall be
248 concluded not later than three days prior to the
249 commencement of the public hearing.

250 (3) If the proposed acquisition of control will require the
251 approval of more than one commissioner, a public hearing
252 pursuant to this subsection may be held on a consolidated

253 basis upon request of the person filing the statement referred
254 to in subsection (a) of this section. That person shall file the
255 statement referred to in subsection (a) of this section with the
256 National Association of Insurance Commissioners within five
257 days of making the request for a public hearing. A
258 commissioner may opt out of a consolidated hearing, and
259 shall provide notice to the applicant of the opt-out within ten
260 days of the receipt of the statement referred to in subsection
261 (a) of this section. A hearing conducted on a consolidated
262 basis shall be public and shall be held within the United
263 States before the commissioners of the states in which the
264 insurers are domiciled. Such commissioners shall hear and
265 receive evidence. A commissioner may attend the hearing,
266 in person or by telecommunication.

267 (4) In connection with a change of control of a domestic
268 insurer, any determination by the commissioner that the
269 person acquiring control of the insurer is required to maintain
270 or restore the capital of the insurer to the level required by the
271 laws of this state shall be made not later than sixty days after
272 the date of filing the change in control submitted pursuant to
273 subdivision (1), subsection (a) of this section.

274 (5) The commissioner may retain at the acquiring
275 person's expense any attorneys, actuaries, accountants and
276 other experts not otherwise a part of the commissioner's staff
277 as may be reasonably necessary to assist the commissioner in
278 reviewing the proposed acquisition of control.

279 (g) *Exemptions.* -- The provisions of this section shall
280 not apply to any offer, request, invitation, agreement or
281 acquisition which the commissioner by order shall exempt
282 therefrom as: (1) Not having been made or entered into for
283 the purpose of, and not having the effect of, changing or
284 influencing the control of a domestic insurer; or (2) as
285 otherwise not comprehended within the purposes of this
286 section.

287 (h) The following are violations of this section:

288 (1) The failure to file any statement, amendment or other
289 material required to be filed pursuant to subsection (a) or (b)
290 of this section; or

291 (2) The effectuation or any attempt to effectuate an
292 acquisition of control of, divestiture of, or merger with, a
293 domestic insurer unless the commissioner has given his or
294 her approval thereto.

295 (i) *Jurisdiction; consent to service of process.* -- The
296 courts of this state are hereby vested with jurisdiction over
297 every person not resident, domiciled or authorized to do
298 business in this state who files a statement with the
299 commissioner under this section and over all actions
300 involving such person arising out of violations of this section
301 and each such person shall be deemed to have performed acts
302 equivalent to and constituting an appointment by the person
303 of the Secretary of State to be his or her true and lawful
304 attorney upon whom may be served all lawful process in any
305 action, suit or proceeding arising out of violations of this
306 section. Copies of all such lawful process shall be served on
307 the Secretary of State and transmitted by registered or
308 certified mail by the Secretary of State to such person at his
309 or her last known address.

§33-27-3a. Acquisitions involving insurers not otherwise covered; definitions; scope; pre-acquisition notification and waiting period; competitive standard; orders and penalties.

1 (a) *Definitions.* -- The following definitions apply to only
2 this section:

3 (1) "Acquisition" means any agreement, arrangement or
4 activity the consummation of which results in a person
5 acquiring directly or indirectly the control of another person,

6 and includes, but is not limited to, the acquisition of voting
7 securities, the acquisition of assets, bulk reinsurance and
8 mergers.

9 (2) An “involved insurer” includes an insurer which
10 either acquires or is acquired, is affiliated with an acquirer or
11 acquired, or is the result of a merger.

12 (b) *Scope.* -- (1) Except as exempted in subdivision (2)
13 of this subsection, this section applies to any acquisition in
14 which there is a change in control of an insurer authorized to
15 do business in this state.

16 (2) This section does not apply to the following:

17 (A) A purchase of securities solely for investment
18 purposes so long as the securities are not used by voting or
19 otherwise to cause or attempt to cause the substantial lessening
20 of competition in any insurance market in this state. If a
21 purchase of securities results in a presumption of control
22 pursuant to subsection (c), section two of this article, it is not
23 solely for investment purposes unless the commissioner of the
24 insurer’s state of domicile accepts a disclaimer of control or
25 affirmatively finds that control does not exist and the
26 disclaimer action or affirmative finding is communicated by
27 the domiciliary commissioner to the commissioner of this
28 state;

29 (B) The acquisition of a person by another person when
30 both persons are neither directly nor through affiliates
31 primarily engaged in the business of insurance, if
32 pre-acquisition notification is filed with the commissioner
33 pursuant to subdivision (1), subsection (c) of this section
34 thirty days prior to the proposed effective date of the
35 acquisition. However, such pre-acquisition notification is not
36 required for exclusion from this section if the acquisition
37 would otherwise be excluded from this section by any other
38 paragraph of this subdivision;

39 (C) The acquisition of already affiliated persons;

40 (D) An acquisition if, as an immediate result of the
41 acquisition:

42 (i) In no market would the combined market share of the
43 involved insurers exceed five percent of the total market;

44 (ii) There would be no increase in any market share; or

45 (iii) In no market would:

46 (I) The combined market share of the involved insurers
47 exceed twelve percent of the total market; and

48 (II) The market share increase by more than two percent
49 of the total market.

50 For the purpose of this paragraph, a “market” means
51 direct written insurance premium in this state for a line of
52 business as contained in the annual statement required to be
53 filed by insurers licensed to do business in this state; and

54 (E) An acquisition for which a pre-acquisition
55 notification would be required pursuant to this section due
56 solely to the resulting effect on the ocean marine insurance
57 line of business;

58 (F) An acquisition of an insurer whose domiciliary
59 commissioner affirmatively finds that the insurer is in failing
60 condition; there is a lack of feasible alternative to improving
61 such condition; the public benefits of improving the insurers
62 condition through the acquisition exceed the public benefits
63 that would arise from not lessening competition; and the
64 findings are communicated by the domiciliary commissioner
65 to the commissioner of this state.

66 (c) *Pre-acquisition notification and waiting period.* -- An
67 acquisition covered by subsection (b) of this section may be
68 subject to an order pursuant to subsection (e) of this section
69 unless the acquiring person files a pre-acquisition notification
70 and the waiting period has expired. The acquired person may
71 file a pre-acquisition notification. The commissioner shall
72 give confidential treatment to information submitted under
73 this subsection in the same manner as provided in section
74 seven of this article.

75 (1) The pre-acquisition notification shall be in such form
76 and contain such information as prescribed by the National
77 Association of Insurance Commissioners relating to those
78 markets that, under paragraph (D), subdivision (2),
79 subsection (b) of this section, cause the acquisition not to be
80 exempted from the provisions of this section. The
81 commissioner may require such additional material and
82 information as deemed necessary to determine whether the
83 proposed acquisition, if consummated, would violate the
84 competitive standard of subsection (d) of this section. The
85 required information may include an opinion of an economist
86 as to the competitive impact of the acquisition in this state
87 accompanied by a summary of the education and experience
88 of such person indicating his or her ability to render an
89 informed opinion.

90 (2) The waiting period required shall begin on the date of
91 receipt of the commissioner of a pre-acquisition notification
92 and shall end on the earlier of the thirtieth day after the date
93 of receipt, or termination of the waiting period by the
94 commissioner. Prior to the end of the waiting period, the
95 commissioner on a one-time basis may require the
96 submission of additional needed information relevant to the
97 proposed acquisition, in which event the waiting period shall
98 end on the earlier of the thirtieth day after receipt of the
99 additional information by the commissioner or termination of
100 the waiting period by the commissioner.

101 (d) Competitive Standard. -- (1) The commissioner may
 102 enter an order under subdivision (1), subsection (e) of this
 103 section, with respect to an acquisition if there is substantial
 104 evidence that the effect of the acquisition may be
 105 substantially to lessen competition in any line of insurance in
 106 this state or tend to create a monopoly or if the insurer fails
 107 to file adequate information in compliance with subsection
 108 (c) of this section.

109 (2) In determining whether a proposed acquisition would
 110 violate the competitive standard of subdivision (1) of this
 111 subsection, the commissioner shall consider the following:

112 (A) Any acquisition covered under subsection (b) of this
 113 section involving two or more insurers competing in the same
 114 market is *prima facie* evidence of violation of the competitive
 115 standards.

116 (i) If the market is highly concentrated and the involved
 117 insurers possess the following shares of the market:

118	Insurer A	Insurer B
119	4%	4% or more
120	10%	10%
121	15%	1% or more

122 (ii) Or, if the market is not highly concentrated and the
 123 involved insurers possess the following shares of the market:

124	Insurer A	Insurer B
125	5%	5% or more
126	10%	4% or more
127	15%	3% or more
128	19%	1% or more

129 A highly concentrated market is one in which the share
 130 of the four largest insurers is seventy-five percent or more of

131 the market. Percentages not shown in the tables are
132 interpolated proportionately to the percentages that are shown.
133 If more than two insurers are involved, exceeding the total of
134 the two columns in the table is *prima facie* evidence of
135 violation of the competitive standard in subdivision one of this
136 subsection. For the purpose of this item, the insurer with the
137 largest share of the market shall be deemed to be Insurer A;

138 (B) There is a significant trend toward increased
139 concentration when the aggregate market share of any
140 grouping of the largest insurers in the market, from the two
141 largest to the eight largest, has increased by seven percent or
142 more of the market over a period of time extending from any
143 base year five to ten years prior to the acquisition up to the
144 time of the acquisition. Any acquisition or merger covered
145 under subsection (b) of this section involving two (2) or more
146 insurers competing in the same market is *prima facie*
147 evidence of violation of the competitive standard in
148 subdivision (1) of this subsection if:

149 (i) There is a significant trend toward increased
150 concentration in the market;

151 (ii) One of the insurers involved is one of the insurers in
152 a grouping of large insurers showing the requisite increase in
153 the market share; and

154 (iii) Another involved insurer's market is two percent or
155 more;

156 (C) For the purposes of subdivision (2), subsection (d) of
157 this section:

158 (i) The term "insurer" includes any company or group of
159 companies under common management, ownership or
160 control;

161 (ii) The term “market” means the relevant product and
162 geographical markets. In determining the relevant product
163 and geographical markets, the commissioner shall give due
164 consideration to, among other things, the definitions or
165 guidelines, if any, promulgated by the National Association
166 of Insurance Commissioners and to information, if any,
167 submitted by parties to the acquisition. In the absence of
168 sufficient information to the contrary, the relevant product
169 market is assumed to be the direct written insurance premium
170 for a line of business, such line being that used in the annual
171 statement required to be filed by insurers doing business in
172 this state, and the relevant geographical market is assumed to
173 be this state;

174 (iii) The burden of showing *prima facie* evidence of
175 violation of the competitive standard rests upon the
176 commissioner.

177 (D) Even though an acquisition is not *prima facie*
178 violative of the competitive standard under paragraphs (A)
179 and (B), subdivision (2) of this subsection, the commissioner
180 may establish the requisite anticompetitive effect based upon
181 other substantial evidence. Even though an acquisition is
182 *prima facie* violative of the competitive standard under
183 paragraphs (A) and (B), subdivision (2) of this subsection, a
184 party may establish the absence of the requisite
185 anticompetitive effect based upon other substantial evidence.
186 Relevant factors in making a determination under this
187 paragraph include, but are not limited to, the following:
188 market shares, volatility of ranking of market leaders, number
189 of competitors, concentration, trend of concentration in the
190 industry, and ease of entry and exit into the market.

191 (3) An order may not be entered under subdivision (1),
192 subsection (e) of this section if:

193 (A) The acquisition will yield substantial economies of
194 scale or economies in resource utilization that cannot be

195 feasibly achieved in any other way, and the public benefits
196 which would arise from such economies exceed the public
197 benefits which would arise from not lessening competition;
198 or

199 (B) The acquisition will substantially increase the
200 availability of insurance, and the public benefits of the
201 increase exceed the public benefits which would arise from
202 not lessening competition.

203 (e) *Orders and Penalties.* -- (1)(A) If an acquisition
204 violates the standards of this section, the commissioner may
205 enter an order:

206 (i) Requiring an involved insurer to cease and desist from
207 doing business in this state with respect to the line or lines of
208 insurance involved in the violation; or

209 (ii) Denying the application of an acquired or acquiring
210 insurer for a license to do business in this state.

211 (B) Such an order shall not be entered unless:

212 (i) There is a hearing;

213 (ii) Notice of the hearing is issued prior to the end of the
214 waiting period and not less than fifteen days prior to the
215 hearing; and

216 (iii) The hearing is concluded and the order is issued no
217 later than sixty days after the date of the filing of the
218 preacquisition notification with the commissioner.

219 (C) Every order issued pursuant to this subsection shall
220 be accompanied by a written decision of the commissioner
221 setting forth findings of fact and conclusions of law.

222 (D) An order pursuant to this subsection does not apply
223 if the acquisition is not consummated.

224 (2) Any person who violates a cease and desist order of
225 the commissioner under subdivision one of this subsection
226 and while the order is in effect may, after notice and hearing
227 and upon order of the commissioner, be subject at the
228 discretion of the commissioner to one or more of the
229 following:

230 (A) A monetary penalty of not more than \$10,000 for
231 every day of violation; or

232 (B) Suspension or revocation of the person's license.

233 (3) Any insurer or other person who fails to make any
234 filing required by this section, and who also fails to
235 demonstrate a good faith effort to comply with any filing
236 requirement, shall be subject to a fine of not more than
237 \$50,000.

238 (f) Inapplicable Provisions. Subsections (b) and (c),
239 section eight of this article and section ten of this article do
240 not apply to acquisitions covered under subsection (b) of this
241 section.

**§33-27-4. Registration of insurers; information and form
required; summary of changes to registration
statement; materiality; reporting of dividends to
shareholders; information to insurers;
termination of registration; consolidated filing;
alternative registration; exemptions; disclaimer;
enterprise risk filing; violations.**

1 (a) *Registration.* -- (1) Every insurer which is authorized
2 to do business in this state and which is a member of an
3 insurance holding company system shall register with the

4 commissioner, except a foreign insurer subject to disclosure
5 requirements and standards adopted by statute or regulation
6 in the jurisdiction of its domicile which are substantially
7 similar to those contained in this section, subsections (a), (b)
8 and (c), section five of this article, and either subsection (d),
9 section five of this article or has a provision such as the
10 following: "Each registered insurer shall keep current the
11 information required to be disclosed in its registration
12 statement by reporting all material changes or additions
13 within fifteen days after the end of the month in which it
14 learns of each change or addition."

15 (2) Any insurer which is subject to registration under this
16 section shall register within fifteen days after it becomes
17 subject to registration and annually thereafter by June 1 of
18 each year for the previous calendar year, unless the
19 commissioner for good cause shown extends the time for
20 registration. The commissioner may require any authorized
21 insurer which is a member of a holding company system
22 which is not subject to registration under this section to
23 furnish a copy of the registration statement, the summary
24 described in subsection (c) of this section, or other
25 information filed by such insurance company with the
26 insurance regulatory authority of domiciliary jurisdiction.

27 (b) *Information and form required.* -- Every insurer
28 subject to registration shall file a registration statement with
29 the commissioner on a form and in a format prescribed by the
30 National Association of Insurance Commissioners, which
31 shall contain the following current information:

32 (1) The capital structure, general financial condition,
33 ownership and management of the insurer and any person
34 controlling the insurer.

35 (2) The identity and relationship of every member of the
36 insurance holding company system.

37 (3) The following agreements in force, relationships
38 subsisting, and transactions currently outstanding or which
39 have occurred during the last calendar year between such
40 insurer and its affiliates:

41 (A) Loans, other investments, or purchases, sales or
42 exchanges of securities of the affiliates by the insurer or of
43 the insurer by its affiliates;

44 (B) Purchases, sales or exchanges of assets;

45 (C) Transactions not in the ordinary course of business;

46 (D) Guarantees or undertakings for the benefit of an
47 affiliate which result in an actual contingent exposure of the
48 insurer's assets to liability, other than insurance contracts
49 entered into in the ordinary course of the insurer's business;

50 (E) All management and service contracts and all
51 cost-sharing arrangements;

52 (F) All reinsurance agreements;

53 (G) Dividends and other distributions to shareholders;
54 and

55 (H) Consolidated tax allocation statements.

56 (4) Any pledge of the insurer's stock, including stock of
57 any subsidiary or controlling affiliate, for a loan made to any
58 member of the insurance holding company system.

59 (5) If requested by the commissioner, the insurer shall
60 include financial statements of or within an insurance holding
61 company system, including all affiliates. Financial statements
62 may include, but are not limited to, annual audited financial
63 statements filed with the U.S. Securities and Exchange

64 Commission (SEC) pursuant to the Securities Act of 1933, as
65 amended, or the Securities Exchange Act of 1934, as
66 amended. An insurer required to file financial statements
67 pursuant to this subdivision may satisfy the request by
68 providing the commissioner with the most recently filed
69 parent corporation financial statements that have been filed
70 with the SEC.

71 (6) Other matters concerning transactions between
72 registered insurers and any affiliates as may be included from
73 time to time in any registration forms adopted or approved by
74 the commissioner.

75 (7) Statements that the insurer's board of directors
76 oversees corporate governance and internal controls and that
77 the insurer's officers or senior management have approved,
78 implemented, and continue to maintain and monitor corporate
79 governance and internal control procedures.

80 (8) Any other information required by the commissioner
81 by rule.

82 (c) *Summary of changes to registration statement.* -- All
83 registration statements shall contain a summary outlining all
84 items in the current registration statement representing
85 changes from the prior registration statement.

86 (d) *Materiality.* -- Information need not be disclosed on
87 the registration statement filed pursuant to subsection (b) of
88 this section if such information is not material for the purpose
89 of this section. Unless the commissioner by rule or order
90 provides otherwise, sales, purchases, exchanges, loans or
91 extensions of credit, or investments, involving one half of
92 one percent or less of an insurer's admitted assets as of
93 December 31, next preceding shall not be deemed material
94 for purposes of this section.

95 (e) *Reporting of dividends to shareholders.* -- Subject to
96 subsection (c), section five of this article, each registered
97 insurer shall report to the commissioner all dividends and
98 other distributions to shareholders within fifteen business
99 days following the declaration thereof.

100 (f) *Information to insurers.* -- Any person within an
101 insurance holding company system subject to registration
102 shall be required to provide complete and accurate
103 information to an insurer, when such information is
104 reasonably necessary to enable the insurer to comply with the
105 provisions of this article.

106 (g) *Termination of registration.* -- The commissioner
107 shall terminate the registration of any insurer which
108 demonstrates that it no longer is a member of an insurance
109 holding company system.

110 (h) *Consolidated filing.* -- The commissioner may require
111 or allow two or more affiliated insurers subject to registration
112 hereunder to file a consolidated registration statement or
113 consolidated reports amending their consolidated registration
114 statement or their individual registration statements.

115 (i) *Alternative registration.* -- The commissioner may
116 allow an insurer which is authorized to do business in this
117 state and which is a part of an insurance holding company
118 system to register on behalf of any affiliated insurer which is
119 required to register under subsection (a) of this section and to
120 file all information and material required to be filed under
121 this section.

122 (j) *Exemptions.* -- The provisions of this section shall not
123 apply to any insurer, information or transaction if and to the
124 extent that the commissioner by rule or order shall exempt
125 the same from the provisions of this section.

126 (k) *Disclaimer.* -- Any person may file with the
127 commissioner a disclaimer of affiliation with any authorized
128 insurer or a disclaimer may be filed by the insurer or any
129 member of an insurance holding company system. The
130 disclaimer shall fully disclose all material relationships and
131 bases for affiliation between the person and the insurer as
132 well as the basis for disclaiming such affiliation. A
133 disclaimer of affiliation shall be deemed to have been granted
134 unless the commissioner, within thirty days following receipt
135 of a complete disclaimer, notifies the filing party the
136 disclaimer is disallowed. In the event of disallowance, the
137 disclaiming party may request an administrative hearing,
138 which shall be granted, and the commissioner shall disallow
139 such a disclaimer only after furnishing all parties in interest
140 with notice and opportunity to be heard and after making
141 specific findings of fact to support such disallowance. The
142 disclaiming party shall be relieved of its duty to register
143 under this section if approval of the disclaimer has been
144 granted by the commissioner, or if the disclaimer is deemed
145 to have been approved.

146 (l) *Enterprise Risk Filing.* -- The ultimate controlling
147 person of every insurer subject to registration shall also file
148 an annual enterprise risk report. The report shall, to the best
149 of the ultimate controlling person's knowledge and belief,
150 identify the material risks within the insurance holding
151 company system that could pose enterprise risk to the insurer.
152 The report shall be filed with the lead state commissioner of
153 the insurance holding company system as determined by the
154 procedures within the Financial Analysis Handbook adopted
155 by the National Association of Insurance Commissioners.

156 (m) *Violations.* -- The failure to file a registration
157 statement or enterprise risk filing thereto required by this
158 section within the time specified for such filing shall be a
159 violation of this section.

§33-27-5. Standards; adequacy of surplus; dividends and other distributions; notice of amendments or modifications; management of domestic insurers subject to registration.

1 (a) Transactions within an insurance holding company
2 system to which an insurer subject to registration is a party
3 shall be subject to the following standards:

4 (1) The terms shall be fair and reasonable;

5 (2) Agreements for cost-sharing services and
6 management shall include such provisions as required by
7 rule;

8 (3) Charges or fees for services performed shall be
9 reasonable;

10 (4) Expenses incurred and payment received shall be
11 allocated to the insurer in conformity with customary
12 insurance accounting practices consistently applied;

13 (5) The books, accounts and records of each party to all
14 such transactions shall be so maintained as to clearly and
15 accurately disclose the nature and details of the transactions,
16 including such accounting information as is necessary to
17 support the reasonableness of the charges or fees to the
18 respective parties; and

19 (6) The insurer's surplus as regards policyholders
20 following any dividends or distributions to shareholder
21 affiliates shall be reasonable in relation to the insurer's
22 outstanding liabilities and adequate to its financial needs.

23 (b) *Adequacy of surplus.* -- For purposes of this article, in
24 determining whether an insurer's surplus as regards
25 policyholders is reasonable in relation to the insurer's

26 outstanding liabilities and adequate to meet its financial
27 needs, the following factors, among others, shall be
28 considered:

29 (1) The size of the insurer as measured by its assets,
30 capital and surplus, reserves, premium writings, insurance in
31 force and other appropriate criteria;

32 (2) The extent to which the insurer's business is
33 diversified among the several lines of insurance;

34 (3) The number and size of risks insured in each line of
35 business;

36 (4) The extent of the geographical dispersion of the
37 insurer's insured risks;

38 (5) The nature and extent of the insurer's reinsurance
39 program;

40 (6) The quality, diversification and liquidity of the
41 insurer's investment portfolio;

42 (7) The recent past and projected future trend in the size
43 of the insurer's surplus as regards policyholders;

44 (8) The surplus as regards policyholders maintained by
45 other comparable insurers;

46 (9) The adequacy of the insurer's reserves; and

47 (10) The quality and liquidity of investments in affiliates.
48 The commissioner may treat any such investment as a
49 disallowed asset for purposes of determining the adequacy of
50 surplus as regards policyholders whenever in his or her
51 judgment such investment so warrants.

52 (c) *Dividends and other distributions.* -- (1) No domestic
53 insurer may pay any extraordinary dividend or make any
54 other extraordinary distribution to its shareholders until:

55 (A) Thirty days after the commissioner has received
56 notice of the declaration thereof and has not within that
57 period disapproved such payment; or

58 (B) The commissioner has approved that payment within
59 the thirty-day period.

60 (2) For purposes of this section, an extraordinary
61 dividend or distribution includes any dividend or distribution
62 of cash or other property, whose fair market value together
63 with that of other dividends or distributions made within the
64 preceding twelve months exceeds the lesser of:

65 (A) Ten percent of such insurer's surplus as regards
66 policyholders as of December 31, next preceding; or

67 (B) The net gain from operations of such insurer, if such
68 insurer is a life insurer, or the net income, if the insurer is not
69 a life insurer, not including realized capital gains, for the
70 twelve-month period ending December 31, next preceding,
71 but shall not include pro rata distributions of any class of the
72 insurer's own securities. In determining whether a dividend
73 or distribution is extraordinary, an insurer other than a life
74 insurer may carry forward net income from the previous two
75 calendar years that has not already been paid out as
76 dividends. This carry-forward shall be computed by taking
77 the net income from the second and third preceding calendar
78 years, not including realized capital gains, less dividends paid
79 in the second and immediate preceding calendar years.

80 (3) Notwithstanding any other provision of law, an
81 insurer may declare an extraordinary dividend or distribution
82 which is conditional upon the commissioner's approval, and
83 the declaration shall confer no rights upon shareholders until:

84 (A) The commissioner has approved the payment of such
85 dividend or distribution; or

86 (B) The commissioner has not disapproved such payment
87 within the thirty-day period referred to above.

88 (d) The following transactions involving a domestic
89 insurer and any person in its insurance holding company
90 system, including amendments or modifications of affiliate
91 agreements previously filed pursuant to this section, that are
92 subject to any materiality standards contained in subdivisions
93 (1) through (5) of this subsection, may not be entered into
94 unless the insurer has notified the commissioner in writing of
95 its intention to enter into the transaction at least thirty days
96 prior thereto, or such shorter period as the commissioner may
97 permit, and the commissioner has not disapproved it within
98 that period: *Provided*, That nothing contained in this
99 subsection shall be deemed to authorize or permit any
100 transactions which, in the case of an insurer not a member of
101 the same holding company system, would be otherwise
102 contrary to law. The notice for amendments or modifications
103 shall include the reasons for the change and the financial
104 impact on the domestic insurer. Informal notice shall be
105 reported, within thirty days after a termination of a previously
106 filed agreement, to the commissioner for determination of the
107 type of filing required, if any.

108 (1) Sales, purchases, exchanges, loans or extensions of
109 credit, guarantees or investments provided such transactions
110 are equal to or exceed:

111 (A) With respect to nonlife insurers, the lesser of three
112 percent of the insurer's admitted assets or twenty-five percent
113 of surplus as regards policyholders; and

114 (B) With respect to life insurers, three percent of the
115 insurer's admitted assets as of December 31, next preceding;

116 (2) Loans or extensions of credit to any person who is not
117 an affiliate, where the insurer makes the loans or extensions
118 of credit with the agreement or understanding that the
119 proceeds of such transactions, in whole or in substantial part,
120 are to be used to make loans or extensions of credit to,
121 purchase assets of, or to make investments in, any affiliate of
122 the insurer making such loans or extensions of credit
123 provided the transactions are equal to or exceed:

124 (A) With respect to nonlife insurers, the lesser of three
125 percent of the insurer's admitted assets or twenty-five percent
126 of surplus as regards policyholders; each as of December 31,
127 next preceding;

128 (B) With respect to life insurers, three percent of the
129 insurer's admitted assets as of December 31, next preceding;

130 (3) Reinsurance agreements or modifications thereto,
131 including:

132 (A) All reinsurance pooling agreements; and

133 (B) Agreements in which the reinsurance premium or a
134 change in the insurer's liabilities, or the projected reinsurance
135 premium or a change in the insurer's liabilities in any of the
136 next three years, equals or exceeds five percent of the
137 insurer's surplus as regards policyholders, as of December
138 31, next preceding, including those agreements which may
139 require as consideration the transfer of assets from an insurer
140 to a nonaffiliate, if an agreement or understanding exists
141 between the insurer and nonaffiliate that any portion of the
142 assets will be transferred to one or more affiliates of the
143 insurer;

144 (4) All management agreements, service contracts, tax
145 allocation agreements, guarantees and all cost-sharing
146 arrangements;

147 (5) Guarantees when made by a domestic insurer;
148 *Provided*, That a guarantee that is quantifiable as to amount
149 is not subject to the notice requirements of this subdivision
150 unless it exceeds the lesser of one half of one percent of the
151 insurer's admitted assets or ten percent of surplus as regards
152 policyholders as of December 31, next preceding: *Provided*,
153 *however*, That all guarantees that are not quantifiable as to
154 amount are subject to the notice requirements of this
155 subdivision.

156 (6) Direct or indirect acquisitions or investments in a
157 person that controls the insurer or in an affiliate of the insurer
158 in an amount which, together with its present holdings in
159 such investments, exceeds two and one-half percent of the
160 insurer's surplus to policyholders. Direct or indirect
161 acquisitions or investments in subsidiaries acquired pursuant
162 to section two-a of this article or authorized under any other
163 section of this chapter, or in nonsubsidiary insurance
164 affiliates that are subject to the provisions of this article, are
165 exempt from this requirement; and

166 (7) Any material transactions, specified by rule, which
167 the commissioner determines may adversely affect the
168 interests of the insurer's policyholders.

169 (e) A domestic insurer may not enter into transactions
170 which are part of a plan or series of like transactions with
171 persons within the insurance holding company system if the
172 purpose of those separate transactions is to avoid the
173 statutory threshold amount and thus avoid the review that
174 would occur otherwise. If the commissioner determines that
175 separate transactions were entered into over any
176 twelve-month period for that purpose, he or she may exercise
177 his or her authority under section nine of this article.

178 (f) The commissioner, in reviewing transactions pursuant
179 to subsection(d) of this section, shall consider whether the

180 transactions comply with the standards set forth in subsection
181 (a) of this section and whether they may adversely affect the
182 interests of policyholders.

183 (g) The commissioner shall be notified within thirty days
184 of any investment of the domestic insurer in any one
185 corporation if the total investment in that corporation by the
186 insurance holding company system exceeds ten percent of
187 such corporation's voting securities.

188 (h) *Management of domestic insurers subject to*
189 *registration.* -- (1) Notwithstanding the control of a domestic
190 insurer by any person, the officers and directors of the insurer
191 shall not thereby be relieved of any obligation or liability to
192 which they would otherwise be subject by law, and the
193 insurer shall be managed so as to assure its separate operating
194 identity consistent with the provisions of this article.

195 (2) Nothing in this section precludes a domestic insurer
196 from having or sharing a common management or
197 cooperatively, or jointly using personnel, property or services
198 with one or more other persons under arrangements meeting
199 the standards of subsection (a) of this section.

200 (3) Not less than one third of the directors of a domestic
201 insurer, and not less than one third of the members of each
202 committee of the board of directors of any domestic insurer,
203 shall be persons who are not officers or employees of the
204 insurer or of any entity controlling, controlled by, or under
205 common control with the insurer and who are not beneficial
206 owners of a controlling interest in the voting stock of the
207 insurer or entity. At least one such person must be included
208 in any quorum for the transaction of business at any meeting
209 of the board of directors or any committee thereof.

210 (4) The board of directors of a domestic insurer shall
211 establish one or more committees comprised solely of
212 directors who are not officers or employees of the insurer or
213 of any entity controlling, controlled by, or under common
214 control with the insurer and who are not beneficial owners of
215 a controlling interest in the voting stock of the insurer or any
216 such entity. The committee or committees have responsibility
217 for nominating candidates for director for election by
218 shareholders or policyholders, evaluating the performance of
219 officers deemed to be principal officers of the insurer and
220 recommending to the board of directors the selection and
221 compensation of the principal officers.

222 (5) The provisions of subdivisions three and four of this
223 subsection do not apply to a domestic insurer if the person
224 controlling the insurer, such as an insurer, a mutual insurance
225 holding company, or a publicly held corporation, has a board
226 of directors and committees thereof that meet the
227 requirements of such subdivisions with respect to such
228 controlling entity.

229 (6) An insurer may make application to the
230 commissioner for a waiver from the requirements of this
231 subsection, if the insurer's annual direct written and
232 assumed premium, excluding premiums reinsured with the
233 Federal Crop Insurance Corporation and Federal Flood
234 Program, is less than \$300 million. An insurer may also
235 make application to the commissioner for a waiver from
236 the requirements of this subsection based upon unique
237 circumstances. The commissioner may consider various
238 factors including, but not limited to, the type of business
239 entity, volume of business written, availability of qualified
240 board members, or the ownership or organizational
241 structure of the entity.

§33-27-6. Examination; power of commissioner; access to books and records; use of consultants; expenses; compelling production, contempt and payment of fees, mileage and actual expenses.

1 (a) *Power of commissioner.* -- Subject to the limitation
2 contained in this section and in addition to the powers which
3 the commissioner has under other provisions of this chapter
4 relating to the examination of insurers, the commissioner has
5 the power to examine any insurer registered under section
6 four of this article and its affiliates to ascertain the financial
7 condition of the insurer, including the enterprise risk to the
8 insurer by the ultimate controlling party, or by any entity or
9 combination of entities within the insurance holding
10 company system, or by the insurance holding company
11 system on a consolidated basis.

12 (b) *Access to books and records.* --

13 (1) The commissioner may order any insurer registered
14 under section four of this article to produce such records,
15 books or other information papers in the possession of the
16 insurer or its affiliates as are reasonably necessary to
17 determine compliance with this chapter.

18 (2) To determine compliance with this chapter, the
19 commissioner may order any insurer registered under section
20 four of this article to produce information not in the possession
21 of the insurer if the insurer can obtain access to such information
22 pursuant to contractual relationships, statutory obligations, or
23 other method. In the event the insurer cannot obtain the
24 information requested by the commissioner, the insurer shall
25 provide the commissioner a detailed explanation of the reason
26 that the insurer cannot obtain the information and the identity of
27 the holder of information. Whenever it appears to the
28 commissioner that the detailed explanation is without merit, the
29 commissioner may, after notice and hearing, require the insurer
30 to pay a penalty of up to \$10,000 for each day's delay, may
31 suspend or revoke the insurer's license, or both impose a penalty
32 and revoke or suspend the insurer's license.

33 (c) *Use of consultants.* -- The commissioner may retain
34 at the registered insurer's expense such attorneys, actuaries,
35 accountants and other experts not otherwise a part of the
36 commissioner's staff as shall be reasonably necessary to
37 assist in the conduct of the examination under subsection (a)
38 of this section. Any person so retained shall be under the
39 direction and control of the commissioner and shall act in a
40 purely advisory capacity.

41 (d) *Expenses.* -- Each registered insurer producing for
42 examination records, books and papers pursuant to
43 subsection (a) of this section is liable for and shall pay the
44 expense of such examination in accordance with applicable
45 laws of this state.

46 (e) *Compelling Production.* -- In the event the insurer fails
47 to comply with an order, the commissioner may examine the
48 affiliates to obtain the information. The commissioner may
49 also issue subpoenas, to administer oaths, and examine under
50 oath any person for purposes of determining compliance with
51 this section. Upon the failure or refusal of any person to
52 obey a subpoena, the commissioner may petition any circuit
53 court and, upon proper showing, the court may enter an order
54 compelling the witness to appear and testify or produce
55 documentary evidence. Failure to obey the court order is
56 punishable as contempt of court. Every person is obliged to
57 attend as a witness at the place specified in the subpoena,
58 when subpoenaed, anywhere within the state. He or she is
59 entitled to the same fees and mileage, if claimed, as a witness
60 in the circuit court of the county in which attendance is
61 required, which fees, mileage, and actual expense, if any,
62 necessarily incurred in securing the attendance of witnesses,
63 and their testimony, shall be itemized and charged against,
64 and be paid by, the company being examined.

§33-27-6a. Supervisory colleges; power of commissioner; expenses; agreements.

1 (a) *Power of commissioner.* -- With respect to any insurer
2 registered under section four of this article, and in accordance
3 with subsection (c) of this section, the commissioner may
4 participate in a supervisory college for any domestic insurer
5 that is part of an insurance holding company system with
6 international operations in order to determine compliance by
7 the insurer with this chapter. The powers of the
8 commissioner with respect to supervisory colleges include,
9 but are not limited to, the following:

10 (1) Initiating the establishment of a supervisory college;

11 (2) Clarifying the membership and participation of other
12 supervisors in the supervisory college;

13 (3) Clarifying the functions of the supervisory college
14 and the role of other regulators, including the establishment
15 of a group-wide supervisor;

16 (4) Coordinating the ongoing activities of the supervisory
17 college, including planning meetings, supervisory activities,
18 and processes for information sharing; and

19 (5) Establishing a crisis management plan.

20 (b) *Supervisory college.* -- In order to assess the business
21 strategy, financial position, legal and regulatory position, risk
22 exposure, risk management and governance processes, and as
23 part of the examination of individual insurers in accordance
24 with section six of this article, the commissioner may
25 participate in a supervisory college with other regulators
26 charged with supervision of the insurer or its affiliates,
27 including other state, federal and international regulatory
28 agencies. The commissioner may enter into agreements in
29 accordance with subsection (c), section seven of this article
30 providing the basis for cooperation between the
31 commissioner and the other regulatory agencies, and the

32 activities of the supervisory college: *Provided*, That this
33 section may not be construed as delegating to the supervisory
34 college the authority of the commissioner to regulate or
35 supervise the insurer or its affiliates within its jurisdiction.

§33-27-7. Confidential treatment.

1 (a) Documents, materials or other information in the
2 possession or control of the commissioner that are obtained
3 by or disclosed to the commissioner or any other person in
4 the course of an examination or investigation made pursuant
5 to section six of this article and all information reported
6 pursuant to subdivision thirteen or fourteen, subsection (b),
7 section three of this article, section four or section five of this
8 article is confidential by law and privileged, is exempt from
9 disclosure pursuant to chapter twenty-nine-b of this code, is
10 not open to public inspection, is not subject to subpoena, is
11 not subject to discovery or admissible in evidence in any
12 criminal, private civil or administrative action and is not
13 subject to production pursuant to court order: *Provided*, That
14 the commissioner is authorized to use the documents,
15 materials or other information in the furtherance of any
16 regulatory or legal action brought as part of the
17 commissioner's official duties. The commissioner may not
18 otherwise make the documents, materials or other
19 information public without the prior written consent of the
20 insurer to which it pertains unless the commissioner, after
21 giving the insurer and its affiliates who would be affected
22 thereby notice and opportunity to be heard, determines that
23 the interests of policyholders, shareholders or the public will
24 be served by the publication thereof, in which event he or she
25 may publish all or any part thereof in any manner as he or she
26 may consider appropriate.

27 (b) Neither the commissioner nor any person who
28 received documents, materials or other information while
29 acting under the authority of the commissioner or with whom
30 such documents, materials or other information are shared

31 pursuant to this article may be permitted or required to testify
32 in any private civil action concerning any confidential
33 documents, materials, or information subject to subsection (a)
34 of this section.

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

37 (1) May share documents, materials or other information,
38 including the confidential and privileged documents,
39 materials or information subject to subsection (a) of this
40 section, with other state, federal and international regulatory
41 agencies, with the National Association of Insurance
42 Commissioners and its affiliates and subsidiaries, and with
43 state, federal, and international law enforcement authorities,
44 including members of any supervisory college described in
45 section six-a of this article, if the recipient agrees in writing
46 to maintain the confidentiality and privileged status of the
47 document, material or other information, and has verified in
48 writing the legal authority to maintain confidentiality;

49 (2) Notwithstanding subdivision (1) of this subsection,
50 the commissioner may only share confidential and privileged
51 documents, material, or information reported pursuant to
52 subsection (1), section four of this article, with commissioners
53 of states having statutes or regulations substantially similar
54 to subdivision (1) of this subsection and who have agreed in
55 writing not to disclose such information;

56 (3) May receive documents, materials or information,
57 including otherwise confidential and privileged documents,
58 materials or information from the National Association of
59 Insurance Commissioners and its affiliates and subsidiaries
60 and from regulatory and law-enforcement officials of other
61 foreign or domestic jurisdictions, and shall maintain as
62 confidential or privileged any document, material or
63 information received with notice or the understanding that it

64 is confidential or privileged under the laws of the jurisdiction
65 that is the source of the document, material or information;
66 and

67 (4) Shall enter into written agreements with the National
68 Association of Insurance Commissioners governing sharing
69 and use of information provided pursuant to this article
70 consistent with this subsection that:

71 (A) Specify procedures and protocols regarding the
72 confidentiality and security of information shared with the
73 National Association of Insurance Commissioners and its
74 affiliates and subsidiaries pursuant to this article, including
75 procedures and protocols for sharing by the National
76 Association of Insurance Commissioners with other state,
77 federal or international regulators;

78 (B) Specify that ownership of information shared with the
79 National Association of Insurance Commissioners and its
80 affiliates and subsidiaries pursuant to this article remains with
81 the commissioner, and the National Association of Insurance
82 Commissioners' use of the information is subject to the
83 direction of the commissioner;

84 (C) Require prompt notice to be given to an insurer
85 whose confidential information in the possession of the
86 National Association of Insurance Commissioners pursuant
87 to this article is subject to a request or subpoena to the
88 National Association of Insurance Commissioners for
89 disclosure or production; and

90 (D) Require the National Association of Insurance
91 Commissioners and its affiliates and subsidiaries to consent
92 to intervention by an insurer in any judicial or administrative
93 action in which the National Association of Insurance
94 Commissioners and its affiliates and subsidiaries may be
95 required to disclose confidential information about the
96 insurer shared with the National Association of Insurance

97 Commissioners and its affiliates and subsidiaries pursuant to
98 this article.

99 (d) The sharing of information by the commissioner
100 pursuant to this article does not constitute a delegation of
101 regulatory authority, and the commissioner is solely
102 responsible for the administration, execution and
103 enforcement of the provisions of this article.

104 (e) No waiver of any applicable privilege or claim of
105 confidentiality in the documents, materials or information
106 occurs as a result of disclosure to the commissioner under
107 this section or as a result of sharing as authorized in
108 subsection (c) of this section.

109 (f) Documents, materials or other information in the
110 possession or control of the National Association of
111 Insurance Commissioners pursuant to this article is
112 confidential by law and privileged, is exempt from disclosure
113 pursuant to chapter twenty-nine-b of this code, is not subject
114 to subpoena, and is not subject to discovery or admissible in
115 evidence in any private civil action.

**§33-27-9. Criminal proceedings; penalties; orders; fines;
disapproval of dividends and distributions.**

1 (a) Any insurer failing, without just cause, to file any
2 registration statement as required by this article shall be
3 required, after notice and hearing, to pay a penalty of up to
4 one thousand dollars for each day's delay, to be recovered by
5 the commissioner. Any penalty so recovered shall be paid
6 into the General Revenue Fund of this state. The
7 commissioner may reduce the penalty if the insurer
8 demonstrates to the commissioner that the imposition of the
9 penalty would constitute a financial hardship to the insurer.

10 (b) Every director or officer of an insurance holding
11 company system who knowingly violates, participates in, or

12 assents to, or who knowingly permits any of the officers or
13 agents of the insurer to engage in transactions or make
14 investments which have not been properly reported or
15 submitted pursuant to subsection (a), section four of this
16 article and subsections (c) and (d), section five of this article,
17 or which violate any other provision of this article, shall pay,
18 in his or her individual capacity, a civil forfeiture of not more
19 than \$5,000 per violation, after notice and hearing before the
20 commissioner. In determining the amount of the civil
21 forfeiture, the commissioner shall take into account the
22 appropriateness of the forfeiture with respect to the gravity of
23 the violation, the history of previous violations, and such
24 other matters as justice may require.

25 (c) Whenever it appears to the commissioner that any
26 insurer subject to this article or any director, officer,
27 employee or agent thereof has engaged in any transaction or
28 entered into a contract which is subject to section five of this
29 article and which would not have been approved had such
30 approval been requested, the commissioner may order the
31 insurer to cease and desist immediately any further activity
32 under that transaction or contract. After notice and hearing
33 the commissioner may also order the insurer to void any such
34 contracts and restore the status quo if the action is in the best
35 interest of the policyholders, creditors or the public.

36 (d) Whenever it appears to the commissioner that any
37 person or any director, officer, employee or agent thereof has
38 committed a willful violation of this article, the
39 commissioner may cause criminal proceedings to be
40 instituted against such person or the responsible director,
41 officer, employee or agent thereof. Any insurer who
42 willfully violates this article is guilty of a misdemeanor and,
43 upon conviction thereof, shall be fined not more than ten
44 thousand dollars. Any individual who willfully violates this
45 article is guilty of a misdemeanor and, upon conviction
46 thereof, shall be fined in his or her individual capacity not

47 more than ten thousand dollars or, if such willful violation
48 involves the deliberate perpetration of a fraud upon the
49 commissioner, is guilty of a felony and, upon conviction
50 thereof, shall be imprisoned not less than one year nor more
51 than three years, or both fined and imprisoned.

52 (e) Any officer, director or employee of an insurance
53 holding company system who willfully and knowingly
54 subscribes to or makes or causes to be made any false
55 statements or false reports or false filings with the intent to
56 deceive the commissioner in the performance of his or her
57 duties under this article, is guilty of a felony and, upon
58 conviction thereof, shall be fined not more than ten thousand
59 dollars, or imprisoned not less than one year nor more than
60 three years, or both fined and imprisoned. Any fines
61 imposed pursuant to this subsection shall be paid by the
62 officer, director or employee in his or her individual capacity.

63 (f) Whenever it appears to the commissioner that any
64 person has committed a violation of section three of this
65 article which prevents the full understanding of the enterprise
66 risk to the insurer by affiliates or by the insurance holding
67 company system, the violation may serve as an independent
68 basis for disapproving dividends or distributions and for
69 placing the insurer under an order of supervision in
70 accordance with article thirty-four of this chapter.

**§33-27-11. Revocation, suspension or nonrenewal of insurer's
license.**

1 Whenever it appears to the commissioner that any person
2 has committed a violation of this article which makes the
3 continued operation of an insurer contrary to the interests of
4 policyholders or the public, the commissioner may, after
5 giving notice and an opportunity to be heard, determine to
6 suspend, revoke or refuse to renew such insurer's license or
7 authority to do business in this state for such period as he or
8 she finds is required for the protection of policyholders or the

9 public: *Provided*, That any such determination shall be
10 accompanied by specific findings of fact and conclusions of
11 law.

§33-27-14. Regulatory authority.

1 The Insurance Commissioner may propose rules for
2 legislative approval in accordance with article three, chapter
3 twenty-nine-a of this code and may promulgate emergency
4 rules pursuant to the provisions of section fifteen, article
5 three, chapter twenty-nine-a of this code, as are necessary to
6 implement the provisions of this article.

CHAPTER 102

**(Com. Sub. for S. B. 356 - By Senators
Minard, Jenkins and Stollings)**

[Passed March 10, 2011; in effect July 1, 2011.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-31-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-31-16a; and to amend and reenact §33-36-2 of said code, all relating to captive insurance; subjecting any captive insurance company organized as a risk retention group to certain insurance code provisions; and correcting technical errors.

Be it enacted by the Legislature of West Virginia:

That §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-31-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-31-16a; and that §33-36-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

1 As used in this article, unless the context requires
2 otherwise:

3 (1) “Affiliated company” means any company in the
4 same corporate system as a parent, an industrial insured or a
5 member organization by virtue of common ownership,
6 control, operation or management.

7 (2) “Alien captive insurance company” means any
8 insurance company formed to write insurance business for its
9 parents and affiliates and licensed pursuant to the laws of a
10 country other than the United States which imposes statutory
11 or regulatory standards in a form acceptable to the
12 commissioner on companies transacting the business of
13 insurance in such jurisdiction.

14 (3) “Association” means any legal association of
15 individuals, corporations, limited liability companies,
16 partnerships, associations or other entities that has been in
17 continuous existence for at least one year, the member
18 organizations of which, or which does itself, whether or not
19 in conjunction with some or all of the member organizations:

20 (A) Own, control or hold with power to vote all of the
21 outstanding voting securities of an association captive
22 insurance company incorporated as a stock insurer;

23 (B) Have complete voting control over an association
24 captive insurance company incorporated as a mutual insurer;
25 or

26 (C) Constitute all of the subscribers of an association
27 captive insurance company formed as a reciprocal insurer.

28 (4) “Association captive insurance company” means any
29 company that insures risks of the member organizations of
30 the association, and their affiliated companies.

31 (5) “Branch business” means any insurance business
32 transacted by a branch captive insurance company in this
33 state.

34 (6) “Branch captive insurance company” means any alien
35 captive insurance company licensed by the commissioner to
36 transact the business of insurance in this state through a
37 business unit with a principal place of business in this state.

38 (7) “Branch operations” means any business operations
39 of a branch captive insurance company in this state.

40 (8) “Captive insurance company” means any pure captive
41 insurance company, association captive insurance company,
42 sponsored captive insurance company, industrial insured
43 captive insurance company or risk retention group formed or
44 licensed under the provisions of this article. For purposes of
45 this article, a branch captive insurance company shall be a
46 pure captive insurance company with respect to operations in
47 this state, unless otherwise permitted by the commissioner.

48 (9) “Commissioner” means the Insurance Commissioner
49 of West Virginia.

50 (10) “Controlled unaffiliated business” means any
51 company:

52 (A) That is not in the corporate system of a parent and
53 affiliated companies;

54 (B) That has an existing contractual relationship with a
55 parent or affiliated company; and

56 (C) Whose risks are managed by a pure captive insurance
57 company in accordance with section nineteen of this article.

58 (11) "Industrial insured" means an insured:

59 (A) Who procures the insurance of any risk or risks by
60 use of the services of a full-time employee acting as an
61 insurance manager or buyer;

62 (B) Whose aggregate annual premiums for insurance on
63 all risks total at least \$25,000; and

64 (C) Who has at least twenty-five full-time employees.

65 (12) "Industrial insured captive insurance company"
66 means any company that insures risks of the industrial
67 insureds that comprise the industrial insured group and their
68 affiliated companies.

69 (13) "Industrial insured group" means any group of
70 industrial insureds that collectively:

71 (A) Own, control or hold with power to vote all of the
72 outstanding voting securities of an industrial insured captive
73 insurance company incorporated as a stock insurer;

74 (B) Have complete voting control over an industrial
75 insured captive insurance company incorporated as a mutual
76 insurer; or

77 (C) Constitute all of the subscribers of an industrial
78 insured captive insurance company formed as a reciprocal
79 insurer.

80 (14) "Member organization" means any individual,
81 corporation, limited liability company, partnership,
82 association or other entity that belongs to an association.

83 (15) "Mutual corporation" means a corporation organized
84 without stockholders and includes a nonprofit corporation
85 with members.

86 (16) "Parent" means a corporation, limited liability
87 company, partnership, other entity, or individual that directly
88 or indirectly owns, controls or holds with power to vote more
89 than fifty percent of the outstanding voting:

90 (A) Securities of a pure captive insurance company
91 organized as a stock corporation; or

92 (B) Membership interests of a pure captive insurance
93 company organized as a nonprofit corporation.

94 (17) "Pure captive insurance company" means any
95 company that insures risks of its parent and affiliated
96 companies or controlled unaffiliated business.

97 (18) "Risk retention group" means a captive insurance
98 company organized under the laws of this state pursuant to
99 the Liability Risk Retention Act of 1986, 15 U.S.C. §3901,
100 et seq., as amended, as a stock or mutual corporation, a
101 reciprocal or other limited liability entity.

§33-31-2. Licensing; authority.

1 (a) Any captive insurance company, when permitted by
2 its articles of association, charter or other organizational

3 document, may apply to the commissioner for a license to do
4 any and all insurance comprised in section ten, article one of
5 this chapter: *Provided*, That all captive insurance companies,
6 except pure captive insurance companies, shall maintain their
7 principal office and principal place of business in this state:
8 *Provided, however*, That:

9 (1) No pure captive insurance company may insure any
10 risks other than those of its parent and affiliated companies
11 or controlled unaffiliated business;

12 (2) No association captive insurance company may insure
13 any risks other than those of the member organizations of its
14 association, and their affiliated companies;

15 (3) No industrial insured captive insurance company may
16 insure any risks other than those of the industrial insureds
17 that comprise the industrial insured group, and their affiliated
18 companies;

19 (4) No risk retention group may insure any risks other
20 than those of its members and owners;

21 (5) No captive insurance company may provide personal
22 motor vehicle or homeowner's insurance coverage or any
23 component thereof;

24 (6) No captive insurance company may accept or cede
25 reinsurance except as provided in section eleven of this
26 article;

27 (7) Any captive insurance company may provide excess
28 workers' compensation insurance to its parent and affiliated
29 companies, unless prohibited by the federal law or laws of
30 the state having jurisdiction over the transaction. Any captive
31 insurance company, unless prohibited by federal law, may
32 reinsure workers' compensation of a qualified self-insured
33 plan of its parent and affiliated companies; and

34 (8) Any captive insurance company which insures risks
35 described in subsections (a) and (b) of section ten, article one
36 of this chapter shall comply with all applicable state and
37 federal laws.

38 (b) No captive insurance company may do any insurance
39 business in this state unless:

40 (1) It first obtains from the commissioner a license
41 authorizing it to do insurance business in this state;

42 (2) Its board of directors, or, in the case of a reciprocal
43 insurer, its subscribers' advisory committee, holds at least
44 one meeting each year in this state; and

45 (3) It appoints a registered agent to accept service of
46 process and to otherwise act on its behalf in this state:
47 *Provided*, That whenever such registered agent cannot with
48 reasonable diligence be found at the registered office of the
49 captive insurance company, the Secretary of State shall be an
50 agent of such captive insurance company upon whom any
51 process, notice, or demand may be served.

52 (c)(1) Before receiving a license, a captive insurance
53 company shall:

54 (A) File with the commissioner a certified copy of its
55 organizational documents, a statement under oath of its
56 president and secretary showing its financial condition, and
57 any other statements or documents required by the
58 commissioner; and

59 (B) Submit to the commissioner for approval a
60 description of the coverages, deductibles, coverage limits and
61 rates, together with such additional information as the
62 commissioner may reasonably require. In the event of any
63 subsequent material change in any item in such description,

64 the captive insurance company shall submit to the
65 commissioner for approval an appropriate revision and shall
66 not offer any additional kinds of insurance until a revision of
67 such description is approved by the commissioner. The
68 captive insurance company shall inform the commissioner of
69 any material change in rates within thirty days of the
70 adoption of such change.

71 (2) Each applicant captive insurance company shall also
72 file with the commissioner evidence of the following:

73 (A) The amount and liquidity of its assets relative to the
74 risks to be assumed;

75 (B) The adequacy of the expertise, experience and
76 character of the person or persons who will manage it;

77 (C) The overall soundness of its plan of operation;

78 (D) The adequacy of the loss prevention programs of its
79 insureds; and

80 (E) Such other factors deemed relevant by the
81 commissioner in ascertaining whether the proposed captive
82 insurance company will be able to meet its policy obligations.

83 (3) Information submitted pursuant to this subsection
84 shall be and remain confidential and may not be made public
85 by the commissioner or an employee or agent of the
86 commissioner without the written consent of the company,
87 except that:

88 (A) Such information may be discoverable by a party in
89 a civil action or contested case to which the captive insurance
90 company that submitted such information is a party, upon a
91 showing by the party seeking to discover such information
92 that:

93 (i) The information sought is relevant to and necessary
94 for the furtherance of such action or case;

95 (ii) The information sought is unavailable from other
96 nonconfidential sources; and

97 (iii) A subpoena issued by a judicial or administrative
98 officer of competent jurisdiction has been submitted to the
99 commissioner: *Provided*, That the provisions of subdivision
100 (3) of this subsection shall not apply to any risk retention
101 group; and

102 (B) The commissioner may, in the commissioner's
103 discretion, disclose such information to a public officer
104 having jurisdiction over the regulation of insurance in another
105 state, if:

106 (i) The public official shall agree in writing to maintain
107 the confidentiality of such information; and

108 (ii) The laws of the state in which such public official
109 serves require such information to be and to remain
110 confidential.

111 (d) Each captive insurance company shall pay to the
112 commissioner a nonrefundable fee of two hundred dollars for
113 examining, investigating and processing its application for
114 license, and the commissioner is authorized to retain legal,
115 financial and examination services from outside the
116 department, the reasonable cost of which may be charged
117 against the applicant. The provisions of subsection (r),
118 section nine, article two of this chapter shall apply to
119 examinations, investigations and processing conducted under
120 the authority of this section. In addition, each captive
121 insurance company shall pay a license fee for the year of
122 registration and a renewal fee for each year thereafter of
123 \$300.

124 (e) If the commissioner is satisfied that the documents
125 and statements that such captive insurance company has filed
126 comply with the provisions of this article, the commissioner
127 may grant a license authorizing it to do insurance business in
128 this state until May 31, thereafter, which license may be
129 renewed.

§33-31-6. Formation of captive insurance companies in this state.

1 (a) A pure captive insurance company may be
2 incorporated as a stock insurer with its capital divided into
3 shares and held by the stockholders, or as a nonprofit
4 corporation with one or more members.

5 (b) An association captive insurance company or an
6 industrial insured captive insurance company may be:

7 (1) Incorporated as a stock insurer with its capital divided
8 into shares and held by the stockholders;

9 (2) Incorporated as a mutual insurer without capital stock,
10 the governing body of which is elected by its insureds; or

11 (3) Organized as a reciprocal insurer in accordance with
12 article twenty-one of this chapter.

13 (c) A captive insurance company incorporated or
14 organized in this state shall have not less than three
15 incorporators or three organizers of whom not less than one
16 shall be a resident of this state.

17 (d) In the case of a captive insurance company:

18 (1)(A) Formed as a corporation the incorporators shall
19 petition the commissioner to issue a certificate setting forth
20 the commissioner's finding that the establishment and

21 maintenance of the proposed corporation will promote the
22 general good of the state. In arriving at such a finding the
23 commissioner shall consider:

24 (i) The character, reputation, financial standing and
25 purposes of the incorporators;

26 (ii) The character, reputation, financial responsibility,
27 insurance experience and business qualifications of the
28 officers and directors; and

29 (iii) Such other aspects as the commissioner shall deem
30 advisable.

31 (B) The articles of incorporation, such certificate, and the
32 organization fee shall be transmitted to the Secretary of State,
33 who shall thereupon record both the articles of incorporation
34 and the certificate.

35 (2) Formed as a reciprocal insurer, the organizers shall
36 petition the commissioner to issue a certificate setting forth
37 the commissioner's finding that the establishment and
38 maintenance of the proposed association will promote the
39 general good of the state. In arriving at such a finding the
40 Commissioner shall consider the items set forth in
41 subparagraphs (i), (ii) and (iii), paragraph (A), subdivision
42 (1) of this subsection.

43 (e) The capital stock of a captive insurance company
44 incorporated as a stock insurer may be authorized with no par
45 value.

46 (f) In the case of a captive insurance company:

47 (1) Formed as a corporation, at least one of the members
48 of the board of directors shall be a resident of this state; and

49 (2) Formed as a reciprocal insurer, at least one of the
50 members of the subscribers' advisory committee shall be a
51 resident of this state.

52 (g) Other than captive insurance companies formed as
53 nonprofit corporations under chapter thirty-one-e of this
54 code, captive insurance companies formed as corporations
55 under the provisions of this article shall have the privileges
56 and be subject to the provisions of the general corporation
57 law as well as the applicable provisions contained in this
58 article. In the event of conflict between the provisions of said
59 general corporation law and the provisions of this article, the
60 latter shall control.

61 (h) Captive insurance companies formed as nonprofit
62 corporations under the provisions of this article shall have the
63 privileges and be subject to the provisions of chapter thirty-
64 one-e of this code as well as the applicable provisions
65 contained in this article. In the event of conflict between the
66 provisions of chapter thirty-one-e of this code and the
67 provisions of this article, the latter shall control.

68 (i) The provisions of sections twenty-five, twenty-seven
69 and twenty-eight, article five of this chapter and section
70 three, article twenty-seven of this chapter, pertaining to
71 mergers, consolidations, conversions, mutualizations,
72 redomestications and mutual holding companies, shall apply
73 in determining the procedures to be followed by captive
74 insurance companies in carrying out any of the transactions
75 described therein, except that:

76 (1) The commissioner may waive or modify the
77 requirements for public notice and hearing in accordance
78 with rules which the commissioner may adopt addressing
79 categories of transactions. If a notice of public hearing is
80 required, but no one requests a hearing, then the
81 commissioner may cancel the hearing; and

82 (2) An alien insurer may be a party to a merger
83 authorized under this subsection: *Provided*, That the
84 requirements for a merger between a captive insurance
85 company and a foreign insurer under section twenty-five,
86 article five of this chapter shall apply to a merger between a
87 captive insurance company and an alien insurer under this
88 subsection. Such alien insurer shall be treated as a foreign
89 insurer under section twenty-five, article five of this chapter
90 and such other jurisdictions shall be the equivalent of a state
91 for purposes of section twenty-five, article five of this
92 chapter.

93 (j) Captive insurance companies formed as reciprocal
94 insurers under the provisions of this article shall have the
95 privileges and be subject to the provisions of article twenty-
96 one of this chapter in addition to the applicable provisions of
97 this article. In the event of a conflict between the provisions
98 of article twenty-one of this chapter and the provisions of this
99 article, the latter shall control. To the extent a reciprocal
100 insurer is made subject to other provisions of this article
101 pursuant to article twenty-one of this chapter, such provisions
102 shall not be applicable to a reciprocal insurer formed under
103 this article unless such provisions are expressly made
104 applicable to captive insurance companies under this article.

105 (k) The articles of incorporation or bylaws of a captive
106 insurance company formed as a corporation may authorize a
107 quorum of its board of directors to consist of no fewer than
108 one third of the fixed or prescribed number of directors
109 determined under section eight hundred twenty-four, article
110 eight, chapter thirty-one-e of this code.

111 (l) The subscribers' agreement or other organizing
112 document of a captive insurance company formed as a
113 reciprocal insurer may authorize a quorum of its subscribers'
114 advisory committee to consist of no fewer than one third of
115 the number of its members.

§33-31-7. Reports and statements.

1 (a) Captive insurance companies shall not be required to
2 make any annual report except as provided in this article.

3 (b) On or before March 1 of each year, each captive
4 insurance company shall submit to the commissioner a report
5 of its financial condition, verified by oath of two of its
6 executive officers. Each captive insurance company shall
7 report using generally accepted accounting principles, unless
8 the commissioner approves the use of statutory accounting
9 principles, with any appropriate or necessary modifications
10 or adaptations thereof required or approved or accepted by
11 the commissioner for the type of insurance and kinds of
12 insurers to be reported upon, and as supplemented by
13 additional information required by the commissioner. Except
14 as otherwise provided, each association captive insurance
15 company and each risk retention group shall file its report in
16 the form required by section fourteen, article four of this
17 chapter, and each risk retention group shall comply with the
18 requirements set forth in article thirty-two of this chapter.
19 The commissioner shall by rule propose the forms in which
20 pure captive insurance companies and industrial insured
21 captive insurance companies shall report.

22 (c) Any pure captive insurance company or an industrial
23 insured captive insurance company may make written
24 application for filing the required report on a fiscal year-end.
25 If an alternative reporting date is granted:

26 (1) The annual report is due sixty days after the fiscal
27 year-end; and

28 (2) In order to provide sufficient detail to support the
29 premium tax return, the pure captive insurance company or
30 industrial insured captive insurance company shall file on or
31 before March 1 of each year for each calendar year-end,

32 pages one, two, three, and five of the “captive annual
33 statement; pure or industrial insured”, verified by oath of two
34 of its executive officers.

§33-31-8. Examinations and investigations.

1 (a) At least once in five years, and whenever the
2 commissioner determines it to be prudent, the commissioner
3 shall personally, or by some competent person appointed by
4 the commissioner, visit each captive insurance company and
5 thoroughly inspect and examine its affairs to ascertain its
6 financial condition, its ability to fulfill its obligations and
7 whether it has complied with the provisions of this article.
8 The captive insurance company shall be subject to the
9 provisions of section nine, article two of this chapter in
10 regard to the expense and conduct of the examination.

11 (b) All examination reports, preliminary examination
12 reports or results, working papers, recorded information,
13 documents and copies thereof produced by, obtained by or
14 disclosed to the commissioner or any other person in the
15 course of an examination made under this section are
16 confidential and are not subject to subpoena and may not be
17 made public by the commissioner or an employee or agent of
18 the commissioner without the written consent of the
19 company, except to the extent provided in this subsection.
20 Nothing in this subsection shall prevent the commissioner
21 from using such information in furtherance of the
22 commissioner’s regulatory authority under this title. The
23 commissioner may, in the commissioner’s discretion, grant
24 access to such information to public officers having
25 jurisdiction over the regulation of insurance in any other state
26 or country, or to law-enforcement officers of this state or any
27 other state or agency of the federal government at any time,
28 so long as such officers receiving the information agree in
29 writing to hold it in a manner consistent with this section.

§33-31-10. Legal investments.

1 (a) Association captive insurance companies and risk
2 retention groups shall comply with the investment
3 requirements contained in article eight of this chapter, as
4 applicable. Subsection (b), section ten and section eleven,
5 article seven of this chapter shall apply to association captive
6 insurance companies and risk retention groups except to the
7 extent it is inconsistent with approved accounting standards
8 in use by the company. Notwithstanding any other provision
9 of this article, the commissioner may approve the use of
10 alternative reliable methods of valuation and rating.

11 (b) No pure captive insurance company or industrial
12 insured captive insurance company shall be subject to any
13 restrictions on allowable investments whatever, including
14 those limitations contained in article eight of this chapter:
15 *Provided*, That the commissioner may prohibit or limit any
16 investment that threatens the solvency or liquidity of any
17 such company.

18 (c) No pure captive insurance company may make a loan
19 to or an investment in its parent company or affiliates without
20 prior written approval of the commissioner, and any such
21 loan or investment must be evidenced by documentation
22 approved by the commissioner. Loans of minimum capital
23 and surplus funds required by section four of this article are
24 prohibited.

§33-31-11. Reinsurance.

1 (a) Any captive insurance company may provide
2 reinsurance, comprised in section fifteen-a, article four of this
3 chapter, on risks ceded by any other insurer: *Provided*, That
4 if the reinsurer is licensed as a risk retention group, then the
5 ceding risk retention group or its members must qualify for
6 membership with the reinsurer.

7 (b) Any captive insurance company may take credit for the
8 reinsurance of risks or portions of risks ceded to reinsurers
9 complying with the provisions of sections fifteen-a and fifteen-b,
10 article four of this chapter. Prior approval of the commissioner
11 shall be required for ceding or taking credit for the reinsurance
12 of risks or portions of risks ceded to reinsurers not complying
13 with sections fifteen-a and fifteen-b, article four of this chapter,
14 except for business written by an alien captive insurance
15 company outside of the United States.

16 (c) In addition to reinsurers authorized under the
17 provisions of section fifteen, article four of this chapter, a
18 captive insurance company may take credit for the
19 reinsurance of risks or portions of risks ceded to a pool,
20 exchange or association acting as a reinsurer which has been
21 authorized by the commissioner. The commissioner may
22 require any other documents, financial information or other
23 evidence that such a pool, exchange or association will be
24 able to provide adequate security for its financial obligations.
25 The commissioner may deny authorization or impose any
26 limitations on the activities of a reinsurance pool, exchange
27 or association that, in the commissioner's judgment, are
28 necessary and proper to provide adequate security for the
29 ceding captive insurance company and for the protection and
30 consequent benefit of the public at large.

31 (d) For all purposes of this article, insurance by a captive
32 insurance company of any workers' compensation qualified
33 self-insured plan of its parent and affiliates shall be deemed
34 to be reinsurance.

§33-31-15. Rules.

1 The commissioner may establish and from time to time
2 amend such rules relating to captive insurance companies as
3 are necessary to enable the commissioner to carry out the
4 provisions of this article.

§33-31-16. Laws applicable.

1 No provisions of this chapter, other than those contained
2 in this article or contained in specific references in this
3 article, may apply to captive insurance companies.

§33-31-16a. Same – Risk Retention Groups.

1 In addition to the applicable provisions of this article, any
2 captive insurance company organized as a risk retention group
3 is subject to the provisions of section nine, article two
4 (examination of insurers, agents, brokers and solicitors; access
5 to books, records, etc.); section fourteen, article four (financial
6 statement filings; annual and quarterly statements; required
7 format; foreign insurers; agents of the commissioner); section
8 fifteen-a, article four (credit for reinsurance; definitions;
9 requirements; trust accounts; reductions from liability; security;
10 effective date); article seven (assets and liabilities); article ten
11 (rehabilitation and liquidation); article twenty-seven (insurance
12 holding company systems); article thirty-three (annual audited
13 financial report); article thirty-four (administrative supervision);
14 article thirty-four-a (standards and commissioner's authority for
15 companies deemed to be in hazardous financial condition);
16 article thirty-five (criminal sanctions for failure to report
17 impairment); article thirty-six (Business Transacted with
18 Producer Controlled Property/Casualty Insurer Act); article
19 thirty-seven (managing general agents); article thirty-eight
20 (Reinsurance Intermediary Act); and article forty-one
21 (Insurance Fraud Prevention Act) of this chapter and any rules
22 promulgated thereunder in accordance with article three, chapter
23 twenty-nine-a of this code.

§33-31-20. Branch captive insurance company formation.

1 (a) A branch captive may be established in this state in
2 accordance with the provisions of this article to write in this
3 state only insurance or reinsurance of the employee benefit

4 business of its parent and affiliated companies which is
5 subject to the provisions of the federal Employee Retirement
6 Income Security Act of 1974 and set forth in 29 U. S. C. §
7 1001, et seq., as amended. In addition to the general
8 provisions of this article, the provisions of sections twenty-
9 one through twenty-five, inclusive, of this article shall apply
10 to branch captive insurance companies.

11 (b) No branch captive insurance company shall do any
12 insurance business in this state unless it maintains the
13 principal place of business for its branch operations in this
14 state.

**ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-
CONTROLLED PROPERTY/ CASUALTY
INSURER ACT.**

§33-36-2. Definitions.

1 As used in this article:

2 (a) “Accredited state” means a state in which the
3 insurance department or regulatory agency has qualified as
4 meeting the minimum financial regulatory standards
5 promulgated and established from time to time by the
6 national association of insurance commissioners.

7 (b) “Control” or “controlled” means the possession, direct or
8 indirect, of the power to direct or cause the direction of the
9 management and policies of a person, whether through the
10 ownership of voting securities, by contract other than a
11 commercial contract for goods or nonmanagement services, or
12 otherwise, unless the power is the result of an official position
13 with or corporate office held by the person. Control shall be
14 presumed to exist if any person, directly or indirectly, owns,
15 controls, holds with the power to vote, or holds proxies
16 representing ten percent or more of the voting securities of any

17 other person or controls or appoints a majority of the board of
18 directors, voting members or similar governing body of any
19 other person. This presumption may be rebutted by a showing
20 made in the manner provided by subsection (l), section four,
21 article twenty-seven of this chapter that control does not exist in
22 fact. The commissioner may determine, after furnishing all
23 persons in interest notice and opportunity to be heard and
24 making specific findings of fact to support the determination,
25 that control exists in fact, notwithstanding the absence of a
26 presumption to that effect.

27 (c) "Controlled insurer" means a licensed insurer which
28 is controlled, directly or indirectly, by a producer.

29 (d) "Controlling producer" means a producer who,
30 directly or indirectly, controls an insurer.

31 (e) "Licensed insurer" or "insurer" means any person, firm,
32 association or corporation duly licensed to transact a property or
33 casualty insurance business, or both property and casualty
34 insurance, in this state: *Provided*, That the following are not
35 licensed insurers for the purposes of this article:

36 (1) All residual market pools and joint underwriting
37 authorities or associations; and

38 (2) All captive insurance companies as defined in article
39 thirty-one of this chapter: *Provided*, That a captive insurance
40 company organized as a risk retention group shall be
41 considered a licensed insurer for the purposes of this article.

42 (f) "Producer" means an insurance broker or brokers or
43 any other person, firm, association or corporation, when, for
44 any compensation, commission or other thing of value, the
45 person, firm, association or corporation acts or aids in any
46 manner in soliciting, negotiating or procuring the making of
47 any insurance contract on behalf of an insured other than the
48 person, firm, association or corporation: *Provided*, That the

49 designation of any individual or entity as a producer does not
50 expand upon or provide for activities beyond those permitted
51 by article twelve of this chapter.

CHAPTER 103

(Com. Sub. for H. B. 2876 - By Delegates
Perry, Hartman, Walters, Hall,
Reynolds, Ashley and Azinger)

[Passed March 9, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §33-48-7b of the Code of West Virginia, 1931, as amended, relating to expanding eligibility for subsidies to enrollees in the model health plan for uninsurable individuals; and providing for emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-48-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 48. MODEL HEALTH PLAN FOR
UNINSURABLE INDIVIDUALS
ACT.**

§33-48-7b. Surplus available to subsidize premiums.

1 Whenever the board determines that the account created
2 pursuant to section seven-a of this article contains a surplus
3 above those amounts necessary to provide fully for the
4 expected costs of claims and other expenses listed in
5 subsection (a), section seven of this article, the plan may use

6 such surpluses to subsidize the premium of enrollees with an
7 annual average household income at or below four hundred
8 percent of the federal poverty level. The board may propose
9 emergency rules and shall propose rules for legislative
10 approval in accordance with the provisions of article three,
11 chapter twenty-nine-a of this code to establish eligibility
12 criteria for enrollees who are eligible for premium subsidy
13 pursuant to this section.

CHAPTER 104

(Com. Sub. for S. B. 61 - By Senator Foster)

[Passed March 4, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-2b; and to amend and reenact §62-15-4 of said code, all relating generally to juvenile drug courts; appointment of hearing officers for juvenile drug courts; and authorizing additional juvenile drug courts.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-5-2b; and that §62-15-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2b. Juvenile drug courts.

1 Juvenile drug courts shall be designed and operated
 2 consistent with the developmental and rehabilitative needs of
 3 juveniles as defined in this article. The Supreme Court shall
 4 provide uniform referral, procedure and order forms that shall be
 5 used in juvenile drug courts. The Supreme Court is further
 6 authorized to appoint appropriate hearing officers in those
 7 jurisdictions which choose to operate a juvenile drug court.
 8 Hearing officers for juvenile drug courts shall be limited to
 9 current or senior status circuit court judges or family court judges.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-4. Court authorization and structure.

1 (a) Each judicial circuit or two or more adjoining judicial
 2 circuits may establish a drug court or regional drug court
 3 program under which drug offenders will be processed to
 4 address appropriately, the identified substance abuse problem
 5 as a condition of pretrial release, probation, incarceration,
 6 parole or other release from a correctional facility.

7 (b) The structure, method, and operation of each drug
 8 court program may differ and should be based upon the
 9 specific needs of and resources available to the judicial
 10 circuit or circuits where the drug court program is located.

11 (c) A drug court program may be preadjudication or
 12 post-adjudication for an adult offender.

13 (d) Participation in drug court, with the consent of the
 14 prosecution and the court, shall be pursuant to a written agreement.

15 (e) A drug court may grant reasonable incentives under
16 the written agreement if it finds that the drug offender:

17 (1) Is performing satisfactorily in drug court;

18 (2) Is benefitting from education, treatment and
19 rehabilitation;

20 (3) Has not engaged in criminal conduct; or

21 (4) Has not violated the terms and conditions of the
22 agreement.

23 (f) A drug court may impose reasonable sanctions on the
24 drug offender, including incarceration for the underlying
25 offense or expulsion from the program, pursuant to the
26 written agreement, if it finds that the drug offender:

27 (1) Is not performing satisfactorily in drug court;

28 (2) Is not benefitting from education, treatment or
29 rehabilitation;

30 (3) Has engaged in conduct rendering him or her
31 unsuitable for the program;

32 (4) Has otherwise violated the terms and conditions of the
33 agreement; or

34 (5) Is for any reason unable to participate.

35 (g) Upon successful completion of drug court, a drug
36 offender's case shall be disposed of by the judge in the
37 manner prescribed by the agreement and by the applicable
38 policies and procedures adopted by the drug court. This may
39 include, but is not limited to, withholding criminal charges,
40 dismissal of charges, probation, deferred sentencing,

41 suspended sentencing, split sentencing, or a reduced period
42 of incarceration.

43 (h) Drug court shall include the Ten Key Components
44 and the drug court team shall act to ensure compliance with
45 them.

46 (i) Nothing contained in this article confers a right or an
47 expectation of a right to participate in a drug court nor does
48 it obligate a drug court to accept every drug offender.

49 (j) Neither the establishment of a drug court nor anything
50 herein may be construed as limiting the discretion of the
51 jurisdiction's prosecutor to act on any criminal case which he
52 or she deems advisable to prosecute.

53 (k) Each drug court judge may establish rules and may
54 make special orders as necessary that do not conflict with
55 rules and orders promulgated by the Supreme Court of
56 Appeals which has administrative authority over the courts.
57 The Supreme Court of Appeals shall provide uniform
58 referral, procedure and order forms that shall be used in all
59 drug courts in this state.

CHAPTER 105

**(H. B. 2708 - By Delegates
Swartzmiller and M. Poling)**

[Passed March 7, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 15, 2011.]

AN ACT to amend and reenact §15-10-4 of the Code of West Virginia, 1931, as amended, relating to removing a twelve-

month limitation for certain agreements between or among law-enforcement agencies to remain in effect; and permitting agreements between or among different law-enforcement agencies to remain in effect unless terminated.

Be it enacted by the Legislature of West Virginia:

That §15-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.

1 (a) The head of any law-enforcement agency, the head of
2 any campus police or the head of the rangers of the
3 Hatfield-McCoy regional recreational authority, as those
4 terms are defined in section three of this article, may
5 temporarily provide assistance and cooperation to another
6 agency of the state criminal justice system or to a federal
7 law-enforcement agency in investigating crimes or possible
8 criminal activity if requested to do so in writing by the head
9 of another law-enforcement agency or federal law-
10 enforcement agency. Such assistance may also be provided
11 upon the request of the head of the law-enforcement agency
12 or federal law-enforcement agency without first being
13 reduced to writing in emergency situations involving the
14 imminent risk of loss of life or serious bodily injury. The
15 assistance may include, but is not limited to, entering into a
16 multijurisdictional task force agreement to integrate federal,
17 state, county and municipal law-enforcement agencies or
18 other groups of state or local law-enforcement officers, or
19 any combination thereof, for the purpose of enhancing
20 interagency coordination, intelligence gathering, facilitating
21 multijurisdictional investigations, providing criminal justice

22 enforcement personnel of the law-enforcement agency to
23 work temporarily with personnel of another agency,
24 including in an undercover capacity, and making available
25 equipment, training, technical assistance and information
26 systems for the more efficient investigation, apprehension
27 and adjudication of persons who violate the criminal laws of
28 this state or the United States, and to assist the victims of
29 such crimes. When providing the assistance under this
30 article, a head of a law-enforcement agency shall comply
31 with all applicable statutes, ordinances, rules, policies or
32 guidelines officially adopted by the state or the governing
33 body of the city or county by which he or she is employed,
34 and any conditions or restrictions included therein.

35 (b) While temporarily assigned to work with another
36 law-enforcement agency or agencies, criminal justice
37 enforcement personnel and other state and local
38 law-enforcement officers shall have the same jurisdiction,
39 powers, privileges and immunities, including those relating
40 to the defense of civil actions, as such criminal justice
41 enforcement personnel would enjoy if actually employed by
42 the agency to which they are assigned, in addition to any
43 corresponding or varying jurisdiction, powers, privileges and
44 immunities conferred by virtue of their continued
45 employment with the assisting agency.

46 (c) While assigned to another agency or to a
47 multijurisdictional task force, criminal justice enforcement
48 personnel and other state and local law-enforcement officers
49 shall be subject to the lawful operational commands of the
50 superior officers of the agency or task force to which they are
51 assigned, but for personnel and administrative purposes,
52 including compensation, they shall remain under the control
53 of the assisting agency. These assigned personnel shall
54 continue to be covered by all employee rights and benefits
55 provided by the assisting agency, including workers'
56 compensation, to the same extent as though such personnel
57 were functioning within the normal scope of their duties.

58 (d) No request or agreement between the heads of
59 law-enforcement agencies, the heads of campus police or the
60 head of the rangers of the Hatfield-McCoy regional recreation
61 authority, made or entered into pursuant to this article shall
62 remain in force or effect until a copy of said request or
63 agreement is filed with the office of the circuit clerk of the
64 county or counties in which the law-enforcement agencies, the
65 campus police, or the Hatfield-McCoy regional recreation
66 authority rangers involved operate. Agreements made pursuant
67 to this article shall remain in effect unless and until the
68 agreement is changed or withdrawn in writing by the head of
69 one of the law-enforcement agencies. Upon filing, the requests
70 or agreements may be sealed, subject to disclosure pursuant to
71 an order of a circuit court directing disclosure for good cause.
72 Nothing in this article shall be construed to limit the authority
73 of the head of a law-enforcement agency, the head of campus
74 police or the head of the rangers of the Hatfield-McCoy
75 regional recreation authority to withdraw from any agreement
76 at any time.

77 (e) Nothing contained in this article shall be construed so
78 as to grant, increase, decrease or in any manner affect the
79 civil service protection or the applicability of civil service
80 laws as to any criminal justice enforcement personnel, or as
81 to any state or local law-enforcement officer or agency
82 operating under the authority of this article, nor shall this
83 article in any way reduce or increase the jurisdiction or
84 authority of any criminal justice enforcement personnel, or of
85 any state or local law-enforcement officer or agency, except
86 as specifically provided herein.

87 (f) Nothing contained in this article shall be construed so
88 as to authorize the permanent consolidation or merger or the
89 elimination of operations of participating federal, state,
90 county municipal law-enforcement agencies, or other groups
91 of state and local law-enforcement officers, the head campus
92 police or the head of the rangers of the Hatfield-McCoy
93 regional recreation authority.

●

CHAPTER 106

**(Com. Sub. for H. B. 2248 - By Delegates
Miley, Iaquina and Fragale)**

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §15-10-5 of the Code of West Virginia, 1931, as amended, relating to the extension of state law-enforcement authority to federal law-enforcement officers under certain circumstances; extending state law-enforcement authority to police and investigators with the Department of Veterans Affairs under appropriate circumstances; extending state law-enforcement authority to special investigators with the Office of Inspector General under appropriate circumstances; and extending state law-enforcement authority to federal air marshals under appropriate circumstances.

Be it enacted by the Legislature of West Virginia:

That §15-10-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW- ENFORCEMENT AGENCIES.

§15-10-5. Federal officers' peace-keeping authority.

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, any person who is employed by the United States
- 3 government as a federal law-enforcement officer and is listed

4 in subsection (b) of this section, has the same authority to
5 enforce the laws of this state, except state or local traffic laws
6 or parking ordinances, as that authority granted to state or
7 local law-enforcement officers, if one or more of the
8 following circumstances exist:

9 (1) The federal law-enforcement officer is requested to
10 provide temporary assistance by the head of a state or local
11 law-enforcement agency or the designee of the head of the
12 agency and that request is within the state or local law-
13 enforcement agency's scope of authority and jurisdiction and
14 is in writing: *Provided*, That the request does not need to be
15 in writing if an emergency situation exists involving the
16 imminent risk of loss of life or serious bodily injury;

17 (2) The federal law-enforcement officer is requested by
18 a state or local law-enforcement officer to provide the officer
19 temporary assistance when the state or local law-enforcement
20 officer is acting within the scope of the officer's authority
21 and jurisdiction and where exigent circumstances exist; or

22 (3) A felony is committed in the federal law-enforcement
23 officer's presence or under circumstances indicating a felony
24 has just occurred.

25 (b) This section applies to the following persons who are
26 employed as full-time federal law-enforcement officers by
27 the United States government and who are authorized to
28 carry firearms while performing their duties:

29 (1) Federal Bureau of Investigation special agents;

30 (2) Drug Enforcement Administration special agents;

31 (3) United States Marshal's Service marshals and deputy
32 marshals;

33 (4) United States postal service inspectors;

34 (5) Internal revenue service special agents;

35 (6) United States secret service special agents;

36 (7) Bureau of alcohol, tobacco, and firearms special
37 agents;

38 (8) Police officers employed pursuant to 40 U.S.C. §§318
39 and 490 at the federal bureau of investigation's criminal
40 justice information services division facility located within
41 this state;

42 (9) Law-enforcement commissioned rangers of the
43 national park service;

44 (10) Department of Veterans Affairs Police and
45 Department of Veterans Affairs special investigators;

46 (11) Office of Inspector General special agents; and

47 (12) Federal Air Marshals with the Federal Air Marshal
48 Service.

49 (c) Any person acting under the authority granted
50 pursuant to this section:

51 (1) Has the same authority and is subject to the same
52 exemptions and exceptions to this code as a state or local
53 law-enforcement officer;

54 (2) Is not an officer, employee, or agent of any state or
55 local law-enforcement agency;

56 (3) May not initiate or conduct an independent
57 investigation into an alleged violation of any provision of this

58 code except to the extent necessary to preserve evidence or
59 testimony at risk of loss immediately following an occurrence
60 described in subdivision (3), subsection (a) of this section;

61 (4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims
62 Act; and

63 (5) Has the same immunities from liability as a state or
64 local law-enforcement officer.

CHAPTER 107

**(Com. Sub. for S. B. 193 - By Senators
Foster, Kessler (Acting President), Chafin,
Hall, Jenkins, Laird, Minard, Palumbo,
Snyder, Williams, Unger and Plymale)**

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-29-11, all relating to certifying law-enforcement officers generally; expanding the responsibilities of the law-enforcement training subcommittee and renaming it the law-enforcement professional standards subcommittee; clarifying the authority to decertify or reactivate a law-enforcement officer's certification; adding the West Virginia Troopers Association to the subcommittee membership; expanding duties of the Governor's committee and the subcommittee; providing consequences for the failure to be certified process for making inactive the certification of officers who separate

from their employment; reactivating a law-enforcement officer's certification; rehiring of officer reactivated not required; and providing for immunity from civil liability.

Be it enacted by the Legislature of West Virginia:

That §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-29-11, all to read as follows:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different
2 meaning clearly appears in the context:

3 (1) "Approved law-enforcement training academy"
4 means any training facility which is approved and authorized
5 to conduct law-enforcement training as provided in this
6 article;

7 (2) "Chief executive" means the superintendent of the
8 State Police; the chief natural resources police officer of the
9 Division of Natural Resources; the sheriff of any West
10 Virginia county; any administrative deputy appointed by the
11 chief natural resources police officer of the Division of
12 Natural Resources; or the chief of any West Virginia
13 municipal law-enforcement agency;

14 (3) "County" means the fifty-five major political
15 subdivisions of the state;

16 (4) "Exempt rank" means any noncommissioned or
17 commissioned rank of sergeant or above;

18 (5) “Governor’s committee on crime, delinquency and
19 correction” or “Governor’s committee” means the
20 Governor’s committee on crime, delinquency and correction
21 established as a state planning agency pursuant to section
22 one, article nine, chapter fifteen of this code;

23 (6) “Law-enforcement officer” means any duly authorized
24 member of a law-enforcement agency who is authorized to
25 maintain public peace and order, prevent and detect crime,
26 make arrests and enforce the laws of the state or any county or
27 municipality thereof, other than parking ordinances, and
28 includes those persons employed as campus police officers at
29 state institutions of higher education in accordance with the
30 provisions of section five, article four, chapter eighteen-b of
31 this code, and persons employed by the Public Service
32 Commission as motor carrier inspectors and weight
33 enforcement officers charged with enforcing commercial
34 motor vehicle safety and weight restriction laws although those
35 institutions and agencies may not be considered law-
36 enforcement agencies. The term also includes those persons
37 employed as rangers by the Hatfield-McCoy Regional
38 Recreation Authority in accordance with the provisions of
39 section six, article fourteen, chapter twenty of this code,
40 although the authority may not be considered a law-
41 enforcement agency: *Provided*, That the subject rangers shall
42 pay the tuition and costs of training. As used in this article, the
43 term “law-enforcement officer” does not apply to the chief
44 executive of any West Virginia law-enforcement agency or
45 any watchman or special natural resources police officer;

46 (7) “Law-enforcement official” means the duly appointed
47 chief administrator of a designated law-enforcement agency
48 or a duly authorized designee;

49 (8) “Municipality” means any incorporated town or city
50 whose boundaries lie within the geographic boundaries of the
51 state;

52 (9) "Subcommittee" or "law-enforcement professional
53 standards subcommittee" means the subcommittee of the
54 Governor's committee on crime, delinquency and correction
55 created by section two of this article; and

56 (10) "West Virginia law-enforcement agency" means any
57 duly authorized state, county or municipal organization
58 employing one or more persons whose responsibility is the
59 enforcement of laws of the state or any county or
60 municipality thereof: *Provided*, That neither the Hatfield-
61 McCoy Regional Recreation Authority, the Public Service
62 Commission nor any state institution of higher education is
63 a law-enforcement agency.

**§30-29-2. Law-enforcement professional standards
subcommittee.**

1 (a) The law-enforcement training subcommittee of the
2 Governor's committee on crime, delinquency and corrections
3 is continued and renamed the Law-Enforcement Professional
4 Standards Subcommittee. The subcommittee has the
5 following responsibilities:

6 (1) Review and administer programs for qualification,
7 training and certification of law-enforcement officers in the
8 state; and

9 (2) Consider applications by law-enforcement officers
10 whose certification is deemed inactive as a result of his or her
11 separation from employment with a law-enforcement agency.

12 (b) The subcommittee shall be comprised of eleven
13 members of the Governor's committee including one
14 representative of each of the following:

15 (1) West Virginia State Police;

16 (2) Law-enforcement section of the Department of
17 Natural Resources;

18 (3) West Virginia Sheriffs Association;

19 (4) West Virginia Association of Chiefs of Police;

20 (5) West Virginia Deputy Sheriffs Association;

21 (6) West Virginia State Lodge Fraternal Order of Police;

22 (7) West Virginia Municipal League;

23 (8) West Virginia Association of county officials;

24 (9) Human Rights Commission;

25 (10) West Virginia Trooper's Association; and

26 (11) The public at large.

27 (c) The subcommittee shall elect a chairperson and a vice
28 chairperson. Special meetings may be held upon the call of
29 the chairperson, vice chairperson or a majority of the
30 members of the subcommittee. A majority of the members
31 of the subcommittee constitutes a quorum.

§30-29-3. Duties of the Governor's committee and the subcommittee.

1 Upon recommendation of the subcommittee, the
2 Governor's committee shall, by or pursuant to rules proposed
3 for legislative approval in accordance with article three,
4 chapter twenty-nine-a of this code:

5 (a) Provide funding for the establishment and support of
6 law-enforcement training academies in the state;

7 (b) Establish standards governing the establishment and
8 operation of the law-enforcement training academies,
9 including regional locations throughout the state, in order to
10 provide access to each law-enforcement agency in the state
11 in accordance with available funds;

12 (c) Establish minimum law-enforcement instructor
13 qualifications;

14 (d) Certify qualified law-enforcement instructors;

15 (e) Maintain a list of approved law-enforcement
16 instructors;

17 (f) Promulgate standards governing the qualification of
18 law-enforcement officers and the entry-level law-
19 enforcement training curricula. These standards shall require
20 satisfactory completion of a minimum of four hundred
21 classroom hours, shall provide for credit to be given for
22 relevant classroom hours earned pursuant to training other
23 than training at an established law-enforcement training
24 academy if earned within five years immediately preceding
25 the date of application for certification, and shall provide that
26 the required classroom hours can be accumulated on the basis
27 of a part-time curricula spanning no more than twelve
28 months, or a full-time curricula;

29 (g) Establish standards governing in-service law-
30 enforcement officer training curricula and in-service
31 supervisory level training curricula;

32 (h) Certify organized criminal enterprise investigation
33 techniques with a qualified anti-racial profiling training
34 course or module;

35 (i) Establish standards governing mandatory training to
36 effectively investigate organized criminal enterprises as

37 defined in article thirteen, chapter sixty-one of this code,
38 while preventing racial profiling, as defined in section ten of
39 this article, for entry level training curricula and for law-
40 enforcement officers who have not received such training as
41 certified by the Governor's committee as required in this
42 section;

43 (j) Establish, no later than July 1, 2011, procedures for
44 implementation of a course in investigation of organized
45 criminal enterprises which includes an anti-racial training
46 module to be available on the Internet or otherwise to all law-
47 enforcement officers. The procedures shall include the
48 frequency with which a law-enforcement officer shall receive
49 training in investigation of organized criminal enterprises and
50 anti-racial profiling, and a time frame for which all law-
51 enforcement officers must receive such training: *Provided,*
52 That all law-enforcement officers in this state shall receive
53 such training no later than July 1, 2012. In order to
54 implement and carry out the intent of this section, the
55 Governor's committee may promulgate emergency rules
56 pursuant to section fifteen, article three, chapter twenty-nine-
57 a of this code;

58 (k) Certify or de-certify or reactivate law-enforcement
59 officers, as provided in sections five and eleven of this
60 article;

61 (l) Establish standards and procedures for the reporting of
62 complaints and certain disciplinary matters concerning law-
63 enforcement officers and for reviewing the certification of
64 law-enforcement officers. These standards and procedures
65 shall provide for preservation of records and access to
66 records by law-enforcement agencies and conditions as to
67 how the information in those records is to be used regarding
68 an officer's law-enforcement employment by another law
69 enforcement agency;

70 (1) The subcommittee shall establish and manage a
71 database that is available to all law-enforcement agencies in
72 the state concerning the status of any person's certification.

73 (2) Personnel or personal information not resulting in a
74 criminal conviction is exempt from disclosure pursuant to the
75 provisions of chapter twenty-nine-b of this code.

76 (m) Seek supplemental funding for law-enforcement
77 training academies from sources other than the fees collected
78 pursuant to section four of this article;

79 (n) Any responsibilities and duties as the Legislature
80 may, from time to time, see fit to direct to the committee; and

81 (o) Submit, on or before September 30 of each year, to
82 the Governor, and upon request to individual members of the
83 Legislature, a report on its activities during the previous year
84 and an accounting of funds paid into and disbursed from the
85 special revenue account established pursuant to section four
86 of this article.

**§30-29-5. Certification requirements and power to decertify or
reinststate.**

1 (a) Except as provided in subsections (b) and (g) below,
2 a person may not be employed as a law-enforcement officer
3 by any West Virginia law-enforcement agency or by any
4 state institution of higher education or by the Public Service
5 Commission of West Virginia on or after the effective date of
6 this article unless the person is certified, or is certifiable in
7 one of the manners specified in subsections (c) through (e)
8 below, by the Governor's committee as having met the
9 minimum entry level law-enforcement qualification and
10 training program requirements promulgated pursuant to this
11 article: *Provided*, That the provisions of this section do not
12 apply to persons hired by the Public Service Commission as

13 motor carrier inspectors and weight enforcement officers
14 before July 1, 2007.

15 (b) Except as provided in subsection (g) below, a person
16 who is not certified, or certifiable in one of the manners
17 specified in subsections (c) through (e) below, may be
18 conditionally employed as a law-enforcement officer until
19 certified: *Provided*, That within ninety calendar days of the
20 commencement of employment or the effective date of this
21 article if the person is already employed on the effective date,
22 he or she makes a written application to attend an approved
23 law-enforcement training academy. The person's employer
24 shall provide notice, in writing, of the ninety-day deadline to
25 file a written application to the academy within thirty
26 calendar days of that person's commencement of
27 employment. The employer shall provide full disclosure as
28 to the consequences of failing to file a timely written
29 application. The academy shall notify the applicant in writing
30 of the receipt of the application and of the tentative date of
31 the applicant's enrollment. Any applicant who, as the result
32 of extenuating circumstances acceptable to his or her law-
33 enforcement official, is unable to attend the scheduled
34 training program to which he or she was admitted may
35 reapply and shall be admitted to the next regularly scheduled
36 training program. An applicant who satisfactorily completes
37 the program shall, within thirty days of completion, make
38 written application to the Governor's committee requesting
39 certification as having met the minimum entry level law-
40 enforcement qualification and training program requirements.
41 Upon determining that an applicant has met the requirements
42 for certification, the Governor's committee shall forward to
43 the applicant documentation of certification. An applicant
44 who fails to complete the training program to which he or she
45 is first admitted, or was admitted upon reapplication, may not
46 be certified by the Governor's committee: *Provided*,
47 *however*, That an applicant who has completed the minimum
48 training required by the Governor's committee may be

49 certified as a law-enforcement officer, notwithstanding the
50 applicant's failure to complete additional training hours
51 required in the training program to which he or she originally
52 applied.

53 (c) Any person who is employed as a law-enforcement
54 officer on the effective date of this article and is a graduate of
55 the West Virginia basic police training course, the West
56 Virginia State Police cadet training program, or other
57 approved law-enforcement training academy, is certifiable as
58 having met the minimum entry level law-enforcement
59 training program requirements and is exempt from the
60 requirement of attending a law-enforcement training
61 academy. To receive certification, the person shall make
62 written application within ninety calendar days of the
63 effective date of this article to the Governor's committee
64 requesting certification. The Governor's committee shall
65 review the applicant's relevant scholastic records and, upon
66 determining that the applicant has met the requirements for
67 certification, shall forward to the applicant documentation of
68 certification.

69 (d) Any person who is employed as a law-enforcement
70 officer on the effective date of this article and is not a
71 graduate of the West Virginia basic police training course,
72 the West Virginia State Police Cadet Training Program, or
73 other approved law-enforcement training academy, is
74 certifiable as having met the minimum entry level law-
75 enforcement training program requirements and is exempt
76 from the requirement of attending a law-enforcement training
77 academy if the person has been employed as a law-
78 enforcement officer for a period of not less than five
79 consecutive years immediately preceding the date of
80 application for certification. To receive certification, the
81 person shall make written application within ninety calendar
82 days following the effective date of this article to the
83 Governor's committee requesting certification. The

84 application shall include notarized statements as to the
85 applicant's years of employment as a law-enforcement
86 officer. The Governor's committee shall review the
87 application and, upon determining that the applicant has met
88 the requirements for certification, shall forward to the
89 applicant documentation of certification.

90 (e) Any person who begins employment on or after the
91 effective date of this article as a law-enforcement officer is
92 certifiable as having met the minimum entry level law-
93 enforcement training program requirements and is exempt
94 from attending a law-enforcement training academy if the
95 person has satisfactorily completed a course of instruction in
96 law enforcement equivalent to or exceeding the minimum
97 applicable law-enforcement training curricula promulgated
98 by the Governor's committee. To receive certification, the
99 person shall make written application within ninety calendar
100 days following the commencement of employment to the
101 Governor's committee requesting certification. The
102 application shall include a notarized statement of the
103 applicant's satisfactory completion of the course of
104 instruction in law enforcement, a notarized transcript of the
105 applicant's relevant scholastic records, and a notarized copy
106 of the curriculum of the completed course of instruction. The
107 Governor's committee shall review the application and, if it
108 finds the applicant has met the requirements for certification
109 shall forward to the applicant documentation of certification.

110 (f) Except as provided in subdivisions (1) through (3)
111 below, any person who is employed as a law-enforcement
112 officer on or after the effective date of this article and fails to
113 be certified shall be automatically terminated and no further
114 emoluments shall be paid to such officer by his or her
115 employer. Any person terminated shall be entitled to reapply,
116 as a private citizen, to the subcommittee for training and
117 certification, and upon being certified may again be
118 employed as a law-enforcement officer in this state:

119 *Provided*, That if a person is terminated under this subsection
120 because an application was not timely filed to the academy,
121 and the person's employer failed to provide notice or
122 disclosure to that person as set forth in subsection (b) of this
123 section, the employer shall pay the full cost of attending the
124 academy if the person's application to the subcommittee as
125 a private citizen is subsequently approved.

126 (1) Any person who is employed as a law-enforcement
127 officer on or after the effective date of this article and fails to
128 be certified as a result of hardship and/or circumstance
129 beyond his or her control may apply to the director of a
130 training academy for reentry to the next available academy.

131 (2) Any person who is employed as a law-enforcement
132 officer on or after the effective date of this article and fails to
133 be certified as a result of voluntary separation from an
134 academy program shall be automatically terminated and no
135 further emoluments may be paid to such officer by his or her
136 employer. Any person terminated as a result of voluntary
137 separation from an academy program may not be
138 conditionally employed as a law-enforcement officer for a
139 period of two years from the date of voluntary separation.

140 (3) Any person who is employed as a law-enforcement
141 officer on or after the effective date of this article and fails to
142 be certified as a result of dismissal from an academy program
143 shall be automatically terminated and no further emoluments
144 may be paid to such officer by his or her employer. Any
145 person terminated as a result of dismissal from an academy
146 program may not be conditionally employed as a law-
147 enforcement officer for a period of five years from the date
148 of dismissal and receiving approval from the subcommittee.

149 (g) Nothing in this article may be construed as
150 prohibiting any governing body, Civil Service Commission
151 or chief executive of any West Virginia law-enforcement

152 agency from requiring their law-enforcement officers to meet
153 qualifications and satisfactorily complete a course of law-
154 enforcement instruction which exceeds the minimum entry
155 level law-enforcement qualification and training curricula
156 promulgated by the Governor's committee.

157 (h) The Governor's committee, or its designee, may de-
158 certify or reactivate a law-enforcement officer pursuant to the
159 procedure contained in this article and legislative rules
160 promulgated by the Governor's committee.

161 (i) The requirement of this section for qualification,
162 training and certification of law-enforcement officers shall
163 not be mandatory during the two years next succeeding July
164 9, 1981 for the law-enforcement officers of a law-
165 enforcement agency which employs a civil service system for
166 its law-enforcement personnel, nor shall such provisions be
167 mandatory during the five years next succeeding July 9, 1981
168 for law-enforcement officers of a law-enforcement agency
169 which does not employ a civil service system for its law-
170 enforcement personnel: *Provided*, That these requirements
171 are mandatory for all such law-enforcement officers until
172 their law-enforcement officials apply for their exemption by
173 submitting a written plan to the Governor's committee which
174 will reasonably assure compliance of all law-enforcement
175 officers of their agencies within the applicable two or five-
176 year period of exemption.

177 (j) Any person aggrieved by a decision of the Governor's
178 committee made pursuant to this article may contest the
179 decision in accordance with the provisions of article five,
180 chapter twenty-nine-a of this code.

181 (k) Any person terminated from employment for not
182 filing an application to the law-enforcement training academy
183 within ninety days after commencing employment as a law-
184 enforcement officer may appeal the termination to the

185 Governor's committee for reconsideration on an individual
186 basis.

187 (l) Beginning July 1, 2002 until June 30, 2003, any
188 applicant who has been conditionally employed as a law-
189 enforcement officer who failed to submit a timely application
190 pursuant to the provisions of this section, may be
191 conditionally employed as a law-enforcement officer and
192 may resubmit an application pursuant to subsection (b) of this
193 section to an approved law-enforcement training academy.
194 If the applicant is accepted, the employer shall pay
195 compensation to the employee for attendance at the law-
196 enforcement training academy at the rate provided in section
197 eight of this article.

**§30-29-11. Certified law-enforcement officers who are separated
from their employment.**

1 (a) The certification of a law-enforcement officer who is
2 separated from his or her employment with a West Virginia
3 law-enforcement agency, shall immediately become inactive
4 and remain inactive until the subcommittee authorizes
5 reactivation of the officer's certification pursuant to the
6 procedure set forth in this section.

7 (b) Whenever a law-enforcement officer is separated
8 from his or her employment with a West Virginia law-
9 enforcement agency, the chief law-enforcement officer of
10 that law-enforcement agency shall notify the subcommittee
11 of the separation within ten days of the date of separation.
12 The notification of the separation from employment shall
13 include reason or reasons the officer is no longer employed.

14 (c) A person whose law-enforcement certification has
15 become inactive pursuant to subsection (a), may apply to the
16 subcommittee to have his or her certification reactivated.

17 (d) At the time of his or her application, an applicant for
18 the reactivation of his or her certification, whether for
19 employment purposes or otherwise, shall provide the
20 subcommittee with an authorization for the release of his or
21 her personnel file from the law-enforcement agency with
22 which they were most recently employed.

23 (e) Upon receipt of an application for reactivation, the
24 subcommittee shall review the notification of separation
25 received from the law-enforcement agency with which the
26 applicant was most recently employed, and unless the
27 notification indicates that the separation from employment
28 was based on circumstances that would result in the applicant
29 being ineligible for certification pursuant to section five of
30 this article, the subcommittee shall grant the applicant a
31 temporary reactivation of his or her certification until a final
32 determination is made pursuant to subsection (i).

33 (f) The subcommittee may request that the law-
34 enforcement agency from which the applicant was most
35 recently separated, provide a copy of the applicants personnel
36 file or other information relevant to the applicant's separation
37 of employment.

38 (g) Upon receipt of a request by the subcommittee, the
39 chief law-enforcement official of the law-enforcement
40 agency with which the applicant was most recently
41 employed, or his or her designee, shall, within eight calendar
42 days, provide the subcommittee with a copy of the
43 applicant's personnel file or other information relevant to the
44 applicant's separation of employment.

45 (h) An applicant shall be entitled to a copy of all
46 documents or other materials submitted to the subcommittee
47 related to the application.

48 (i) Within thirty days of the receipt of the applicant's
49 personnel file or any other information provided by the law-
50 enforcement agency, the subcommittee shall review the
51 information and issue a final decision.

52 (j) For the purpose of making a determination on an
53 application for reactivation, the subcommittee is authorized
54 to examine witnesses and to subpoena persons, books,
55 records or documents from law-enforcement agencies in this
56 state.

57 (k) An application for reactivation shall be approved
58 unless the subcommittee affirmatively demonstrates, in
59 writing, that the applicant has engaged in conduct that may
60 result in his or her decertification. Where information
61 available to the subcommittee indicates that the applicant has
62 engaged in conduct that is in violation of this article or other
63 laws or rules, the application for reactivation may not be
64 granted.

65 (l) An applicant whose certification is not reactivated
66 pursuant to a final decision of the subcommittee, may appeal
67 the final decision of the subcommittee to the Governor's
68 committee.

69 (m) Nothing in this section shall be construed to require
70 the rehiring of a person by a law enforcement agency from
71 which he or she was separated, even though the
72 subcommittee authorizes his or her certification to be
73 reactivated.

74 (n) A law-enforcement official, or appointing officer, or
75 his or her designee, is immune from civil liability for
76 providing to the subcommittee any information required or
77 requested by this section.

78 (o) The provisions of this section apply only to those
79 certified law-enforcement officers who are separated from
80 employment with a West Virginia law enforcement agency
81 after the effective date of this section during the 2011
82 Regular Session of the Legislature.

CHAPTER 108

**(Com. Sub. for S. B. 112 - By Senators
Minard, Snyder, Prezioso, Unger,
Boley and K. Facemyer)**

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on March 30, 2011.]

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 Department of Administration; 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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Administration to

promulgate a legislative rule relating to state-owned vehicles; 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 Teachers' Defined Contribution Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to Public Employees Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service, loan and employer error interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; and authorizing the Ethics Commission to promulgate a legislative rule relating to forms.

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.**

§64-2-1. Department of Administration.

1 The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand ten, authorized under
3 the authority of section two, article one, chapter five-a of this
4 code, modified by the Department of Administration to meet
5 the objections of the Legislative Rule-Making Review
6 Committee and refiled in the state register on the twenty-first
7 day of January, two thousand eleven, relating to the
8 Department of Administration (state owned vehicles, 148
9 CSR 3), is authorized with the following amendments:

10 On page one, subsection 1.1., by striking out all of
11 subsection 1.1 and inserting in lieu thereof a new subsection
12 1.1 to read as follows:

13 “1.1 Scope. - This Rule governs all state owned and
14 leased vehicles and aircraft, including the minimal
15 requirements for all state spending units that have a state
16 vehicle and/or aircraft in their possession.”;

17 On page four, section 4, by striking out all of section 4
18 and inserting in lieu thereof a new section four to read as
19 follows:

“§148-3-4. Titles to State owned or Long-Term Leased Vehicles

1 Vehicles may be titled in the name of the spending unit.
2 The Fleet Management Office will coordinate with spending
3 units to ensure standardized naming convention. For Model
4 Years beginning with 2011, the Fleet Management Office
5 will initiate the titling and registration process, digitize, and
6 safeguard the original title. The original title documents for
7 the Model Years prior to 2011 will be provided to the Fleet
8 Management Office for digitization and safekeeping.
9 Spending units will be provided with web-enabled, secure
10 access to and/or digitized copy of the title documents.
11 Original titling documents will be returned to the spending
12 unit within five (5) business days of a determination by the
13 Department of Administration, Board of Risk and Insurance
14 Management that the vehicle is no longer insurable; or the
15 vehicle is scheduled for decommissioning activity by the
16 spending unit.”;

17 On page four, subsection 5.1., by striking out all of
18 subsection 5.1. and inserting in lieu thereof a new subsection
19 5.1. to read as follows:

20 “5.1. A vehicle lease may be terminated by the Fleet
21 Management Office for failing to maintain the vehicle;

22 vehicle abuse beyond the intended purpose of the vehicle; or
23 becoming seriously delinquent (more than 90 days).”;

24 On pages four and five, subsection 5.4., by striking out
25 all of subsection 5.4. and inserting in lieu thereof a new
26 subsection 5.4. to read as follows:

27 “5.4. All vehicles governed by this rule should meet
28 minimum utilization criteria established by the Fleet
29 Management Office. Justification for each underutilized
30 vehicle will be provided by the assigned Cabinet Secretary
31 using the Fleet Management Office designated form.
32 Utilization criteria will apply to each vehicle individually;
33 consider periods of inactivity; specialized vehicle mission;
34 cost effectiveness; minimum mileage requirements; and the
35 current replacement methodology established by the Fleet
36 Management Office. Minimum utilization criteria will be
37 reviewed by the Fleet Management Office each fiscal year,
38 provided to assigned cabinet secretary, and included in an
39 annual report to the Executive and Legislative branches of
40 State Government.”;

41 On page seven, after subdivision 8.8.6., by inserting a
42 new subsection 8.9. to read as follows:

43 “8.9. Confidentially played vehicles may be excluded, at the
44 discretion of the spending unit, from any automated fleet
45 management program: *Provided*, That information necessary to
46 accurately report the vehicle for asset management purposes,
47 such as vehicle class, model year, drive type, in-service date, and
48 odometer reading as well as vehicle commuting status for fringe
49 benefit reporting purposes will be provided by the fifth working
50 day of each month by the spending unit using the Fleet
51 Management Office designated form.”;

52 On page nine, subsection 10.1., by striking out all of
53 subsection 10.1. and inserting a new subsection 10.1. to read
54 as follows:

55 “10.1. Any long-term vehicle lease must first be
56 approved by the Fleet Management Office. Any vehicle
57 purchase must first be reviewed by the Fleet Management
58 Office.

59 Regardless of vehicle acquisition method, spending units
60 should not increase their fleet size without prior notification
61 to the Fleet Management Office. A designated form will be
62 processed by the Fleet Management Office with response
63 provided to spending unit within five (5) business days from
64 receipt of the designated form by the Fleet Management
65 Office.”;

66 And,

67 On page eleven, subdivision 10.9.1., by striking out the
68 first sentence and inserting in lieu thereof a new first sentence
69 to read as follows:

70 “Accidents and damage to vehicles and aircraft must be
71 reported to the Fleet Management Office and the Board of
72 Risk and Insurance Management by the spending unit on the
73 day of the accident if practical or the next business day if it
74 is impractical to report the accident.”

§64-2-2. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the state register on the
2 twenty-second day of July, two thousand ten, authorized
3 under the authority of section one, article ten-d, chapter five
4 of this code, relating to the Consolidated Public Retirement
5 Board (general provisions, 162 CSR 1), is authorized.

6 (b) The legislative rule filed in the state register on the
7 twenty-second day of July, two thousand ten, authorized
8 under the authority of section one, article ten-d, chapter five
9 of this code, relating to the Consolidated Public Retirement

10 Board (Teachers' Defined Contribution System, 162 CSR 3),
11 is authorized.

12 (c) The legislative rule filed in the state register on the
13 twenty-second day of July, two thousand ten, authorized
14 under the authority of section one, article ten-d, chapter five
15 of this code, relating to the Consolidated Public Retirement
16 Board (Public Employees Retirement System, 162 CSR 5),
17 is authorized with the following amendments:

18 On page two, subdivision 5.1.4., by striking out the word
19 "5.1.2." and inserting in lieu thereof the word "5.1.3.";

20 And,

21 On page two, subdivision 5.1.5., by striking out the word
22 "5.1.3." and inserting in lieu thereof the word "5.1.4.".

23 (d) The legislative rule filed in the state register on the
24 twenty-second day of July, two thousand ten, authorized
25 under the authority of section one, article ten-d, chapter five
26 of this code, relating to the Consolidated Public Retirement
27 Board (refund, reinstatement, retroactive service, loan and
28 employer error interest factors, 162 CSR 7), is authorized
29 with the following amendment:

30 On page five, subsection 4.2., by striking out all of
31 subsection 4.2. and inserting in lieu thereof a new subsection
32 4.2. to read as follows:

33 "4.2. West Virginia State Police Death, Disability and
34 Retirement Fund. In the event a member of the West Virginia
35 State Police Death, Disability and Retirement Funds requests
36 and is determined to be eligible to restore retirement system
37 service credit for periods of previously terminated employment,
38 the member shall pay into the West Virginia State Police
39 Retirement System as established in W. Va. Code §15-2A-1 et
40 seq., any contributions which the member may have previously

41 withdrawn from the West Virginia State Police Death, Disability
42 and Retirement Fund at the termination of any prior periods of
43 employment, plus reinstatement interest at the rate specified in
44 W. Va. Code §15-2-37(b).”

45 (e) The legislative rule filed in the state register on the
46 twenty-second day of July, two thousand ten, authorized
47 under the authority of section one, article ten-d, chapter five
48 of this code, relating to the Consolidated Public Retirement
49 Board (West Virginia State Police, 162 CSR 9), is authorized.

§64-2-3. Ethics Commission.

1 The legislative rule filed in the state register on the
2 twenty-fourth day of June, two thousand ten, authorized
3 under the authority of section two, article two, chapter six-b
4 of this code, modified by the Ethics Commission to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the state register on the twentieth
7 day of August, two thousand ten, relating to the Ethics
8 Commission (forms, 158 CSR 20), is authorized.

CHAPTER 109

**(Com. Sub. for S. B. 121 - By Senators
Minard, Snyder, Prezioso, Unger,
Boley and K. Facemyer)**

[Amended and again passed March 18, 2011, in an effort to meet the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2011.]

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 Department of Environmental Protection; 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 in the form that the rules were filed in the State Register and 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; 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 certain of the agencies to promulgate certain legislative rules as amended by the Legislature; 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 surface mining reclamation; 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 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 standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; 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 which cause or contribute to nonattainment; authorizing the Department of

Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing groundwater standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring well design standards.

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.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, two thousand ten, authorized under the
3 authority of section six, article eighteen, chapter twenty-two
4 of this code, modified by the Department of Environmental
5 Protection to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the state register on
7 the twenty-first day of September, two thousand ten, relating
8 to the Department of Environmental Protection (hazardous
9 waste management system, 33 CSR 20), is authorized.

10 (b) The legislative rule filed in the state register on the
11 thirtieth day of July, two thousand ten, authorized under the
12 authority of section four, article three, chapter twenty-two of
13 this code, modified by the Department of Environmental
14 Protection to meet the objections of the Legislative Rule-
15 Making Review Committee and refiled in the state register on
16 the eighteenth day of January, two thousand eleven, relating
17 to the Department of Environmental Protection (surface
18 mining reclamation, 38 CSR 2), is authorized with the
19 following amendments:

20 On page fifty-four, subdivision 3.32.b., by striking out
21 the words “For the purposes of W.Va. Code §22-3-
22 19(a)(1)(B), an operator shall be considered in compliance
23 with the applicable environmental performance standards
24 referenced therein unless it has unabated cessation orders,
25 notices of violations that are not in the process of being
26 abated to the Secretary’s satisfaction, delinquent civil
27 penalties, or bond forfeitures.”;

28 On pages one hundred fifty-four and one hundred fifty-
29 five, paragraph 12.2.a.1., by striking out all of paragraph
30 12.2.a.1. and inserting in lieu thereof a new paragraph
31 12.2.a.1. to read as follows:

32 “12.2.a.1. The permittee may file an application with the
33 Secretary for the release of all or part of a bond.
34 Applications may be filed only at times or during seasons
35 established by the Secretary which allow proper evaluation
36 of the completed reclamation operations.”;

37 And,

38 On page one hundred seventy-seven, subdivision
39 14.11.h., by striking out the words “e. and f.” and inserting
40 in lieu thereof the words “e., f. and g.”.

41 (c) The legislative rule filed in the state register on the
42 twenty-eighth day of July, two thousand ten, authorized
43 under the authority of section four, article five, chapter
44 twenty-two of this code, relating to the Department of
45 Environmental Protection (ambient air quality standards, 45
46 CSR 8), is authorized.

47 (d) The legislative rule filed in the state register on the
48 twenty-eighth day of July, two thousand ten, authorized
49 under the authority of section four, article five, chapter
50 twenty-two of this code, modified by the Department of
51 Environmental Protection to meet the objections of the
52 Legislative Rule-Making Review Committee and refiled in
53 the state register on the eleventh day of January, two
54 thousand eleven, relating to the Department of Environmental
55 Protection (permits for construction and major modification
56 of major stationary sources of air pollution for the prevention
57 of significant deterioration, 45 CSR 14), is authorized with
58 the following amendment:

59 On page twenty, after paragraph 2.80.e.2., by adding the
60 following:

61 “2.80.f. Notwithstanding subdivisions 2.80.d. and
62 2.80.e., and subject to the public notice requirements set forth
63 in subdivision 2.80.g., the preconstruction permit
64 requirements of this rule shall not apply to a source’s GHG
65 emissions if any of the following actions result in GHGs not
66 being subject to regulation under the otherwise applicable
67 federal prevention of significant deterioration requirements
68 set forth in 40 CFR §51.166:

69 2.80.f.1. A US EPA final rule;

70 2.80.f.2. An act of the United States Congress;

71 2.80.f.3. A Presidential Executive Order;

72 2.80.f.4. A final order of the District of Columbia Circuit
73 Court of Appeals, if the specified time for appealing the order
74 has lapsed and no appeals, petitions seeking clarification or
75 rehearing, or other petitions regarding the order have been
76 filed, or, if any appeals or petitions are filed, the resolution of
77 any and all appeals and petitions regarding the final order are
78 complete and have upheld the relevant determination(s).
79 Moreover, a stay shall also create an exemption during the
80 effective length of the stay. These two specific exemptions
81 shall become effective only if US EPA does not object in
82 writing by the end of the notice period set forth in
83 subdivision 2.80.g.; or

84 2.80.f.5. An order of the United States Supreme Court.

85 2.80.g. The exemption set forth in subdivision 2.80.f.
86 shall become effective after the Secretary provides a thirty
87 day notice of such exemption to US EPA and the public.
88 Such notice shall be published in the West Virginia Register
89 and explain the circumstances justifying the exemption.”

90 (e) The legislative rule filed in the state register on the
91 twenty-eighth day of July, two thousand ten, authorized
92 under the authority of section four, article five, chapter
93 twenty-two of this code, relating to the Department of
94 Environmental Protection (standards of performance for new
95 stationary sources, 45 CSR 16), is authorized.

96 (f) The legislative rule filed in the state register on the
97 twenty-eighth day of July, two thousand ten, authorized
98 under the authority of section four, article five, chapter
99 twenty-two of this code, modified by the Department of
100 Environmental Protection to meet the objections of the
101 Legislative Rule-Making Review Committee and refiled in
102 the state register on the eleventh day of January, two
103 thousand eleven, relating to the Department of Environmental
104 Protection (control of air pollution from combustion of solid
105 waste, 45 CSR 18), is authorized.

106 (g) The legislative rule filed in the state register on the
107 twenty-eighth day of July, two thousand ten, authorized
108 under the authority of section four, article five, chapter
109 twenty-two of this code, relating to the Department of
110 Environmental Protection (permits for construction and major
111 modification of major stationary sources of air pollution
112 which cause or contribute to nonattainment, 45 CSR 19), is
113 authorized.

114 (h) The legislative rule filed in the state register on the
115 twenty-eighth day of July, two thousand ten, authorized
116 under the authority of section four, article five, chapter
117 twenty-two of this code, relating to the Department of
118 Environmental Protection (control of air pollution from
119 hazardous waste treatment, storage or disposal facilities, 45
120 CSR 25), is authorized.

121 (i) The legislative rule filed in the state register on the
122 twenty-eighth day of July, two thousand ten, authorized
123 under the authority of section four, article five, chapter
124 twenty-two of this code, relating to the Department of
125 Environmental Protection (emission standards for hazardous
126 air pollutants, 45 CSR 34), is authorized.

127 (j) The legislative rule filed in the state register on the
128 thirtieth day of July, two thousand ten, authorized under the
129 authority of section four, article eleven, chapter twenty-two
130 of this code, relating to the Department of Environmental
131 Protection (requirements governing water quality standards,
132 47 CSR 2), is authorized with the following amendments:

133 On pages two and three, subsection 3.1, by striking out
134 the words “and certain water withdrawal activities”;

135 On page three, subsection 3.2, by striking out the words
136 “or water withdrawal activities”;

137 On page fourteen, subdivision 8.2.b., striking out all of
138 subdivision 8.2.b. and inserting in lieu thereof a new
139 subdivision 8.2.b. to read as follows:

140 “8.2.b. For waters other than the Ohio River between
141 river mile points 68.0 and 70.0, a final determination on the
142 critical design flow for carcinogens is not made in this rule,
143 in order to permit further review and study of that issue.
144 Following the conclusion of such review and study, the
145 Legislature may again take up the authorization of this rule
146 for purposes of addressing the critical design flow for
147 carcinogens: Provided, That until such time as the review and
148 study of the issue is concluded or until such time as the
149 Legislature may again take up the authorization of this rule,
150 the regulatory requirements for determining effluent limits
151 for carcinogens shall remain as they were on the date this rule
152 was proposed.”;

153 On page fourteen, after subdivision 8.2.b., by adding a
154 new paragraph 8.2.b.1. to read as follows:

155 “8.2.b.1. For the Ohio River between river mile points
156 68.0 and 70.0 the critical design flow for determining effluent
157 limits for carcinogens shall be harmonic mean flow.”;

158 On page fourteen, subdivision 8.3.b., by striking out all
159 of subdivision 8.3.b.;

160 On page fourteen, paragraph 8.3.b.1., by striking out all
161 of paragraph 8.3.b.1.;

162 On page fourteen, subparagraph 8.3.b.1.A., by striking
163 out all of subparagraph 8.3.b.1.A.;

164 And,

165 On page forty-seven, by striking out all of parameter 8.32
166 and renumbering the remaining parameters.

167 (k) The legislative rule filed in the State Register on April
168 8, 2010, authorized under the authority of section four, article
169 eleven, chapter twenty-two of this code, approved for
170 promulgation by the Legislature on March 13, 2010, relating
171 to the Department of Environmental Protection (National
172 Pollutant Discharge Elimination System (NPDES) Program,
173 47 CSR 10), is authorized with the following amendments:

174 On page forty-four, part 13.1.b.4.A.13., by striking out all
175 of part 13.1.b.4.A.13. and inserting in lieu thereof a new part
176 13.1.b.4.A.13. to read as follows:

177 “13.1.b.4.A.13. Five thousand (5,000) ducks, if the AFO
178 uses a liquid manure handling system.”;

179 On page forty-four, subparagraph 13.1.b.4.B, by striking
180 out all of subparagraph 13.1.b.4.B;

181 On page forty-four, part 13.1.b.4.B.1, by striking out all
182 of part 13.1.b.4.B.1.;

183 And,

184 On page forty-four, part 13.1.b.4.B.2, by striking out all
185 of part 13.1.b.4.B.2.

186 (l) The legislative rule filed in the state register on the
187 twenty-third day of July, two thousand ten, authorized under
188 the authority of section four, article twelve, chapter twenty-
189 two of this code, modified by the Department of
190 Environmental Protection to meet the objections of the
191 Legislative Rule-Making Review Committee and refiled in
192 the state register on the fourteenth day of September, two
193 thousand ten, relating to the Department of Environmental
194 Protection (requirements governing groundwater standards,
195 47 CSR 12), is authorized.

196 (m) The legislative rule filed in the state register on the
197 twenty-sixth day of July, two thousand ten, authorized under
198 the authority of section five, article twelve, chapter twenty-
199 two of this code, modified by the Department of
200 Environmental Protection to meet the objections of the
201 Legislative Rule-Making Review Committee and refiled in
202 the state register on the twenty-second day of September, two
203 thousand ten, relating to the Department of Environmental
204 Protection (monitoring well design standards, 47 CSR 60), is
205 authorized.

CHAPTER 110

**(Com. Sub. for S. B. 295 - By Senators
Minard, Snyder, Prezioso, Unger,
Boley and K. Facemyer)**

[Amended and again passed March 18, 2011, in an effort to meet
the objections of the Governor; in effect from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; 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 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 specialized multipatient medical transport; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food manufacturing facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fire department rapid response services licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to cancer registry; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to maternal risk screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to safety and treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to requirements for licensure of nonprofit corporations for conservator service; and authorizing the Health Care Authority to promulgate a legislative rule relating to certificates of need.

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.

- 1 (a) The legislative rule filed in the state register on the
- 2 twenty-ninth day of July, two thousand ten, authorized under

3 the authority of section four, article one, chapter sixteen, of
4 this code, relating to the Department of Health and Human
5 Resources (public water systems, 64 CSR 3), is authorized.

6 (b) The legislative rule filed in the state register on the
7 thirtieth day of July, two thousand ten, authorized under the
8 authority of section six, article four-c, chapter sixteen, of this
9 code, relating to the Department of Health and Human
10 Resources (specialized multipatient medical transport, 64
11 CSR 29), is authorized.

12 (c) The legislative rule filed in the state register on the
13 twenty-ninth day of July, two thousand ten, authorized under
14 the authority of section four, article one, chapter sixteen, of
15 this code, modified by the Department of Health and Human
16 Resources to meet the objections of the Legislative Rule-
17 Making Review Committee and refiled in the state register on
18 the third day of January, two thousand eleven, relating to the
19 Department of Health and Human Resources (food
20 manufacturing facilities, 64 CSR 43), is authorized.

21 (d) The legislative rule filed in the state register on the
22 thirtieth day of July, two thousand ten, authorized under the
23 authority of section six, article four-c, chapter sixteen, of this
24 code, relating to the Department of Health and Human
25 Resources (fire department rapid response services licensure,
26 64 CSR 44), is authorized.

27 (e) The legislative rule filed in the state register on the
28 thirtieth day of July, two thousand ten, authorized under the
29 authority of section six, article four-c, chapter sixteen, of this
30 code, modified by the Department of Health and Human
31 Resources to meet the objections of the Legislative Rule-
32 Making Review Committee and refiled in the state register on
33 the twenty-fourth day of January, two thousand eleven,
34 relating to the Department of Health and Human Resources

35 (emergency medical services, 64 CSR 48), is authorized with
36 the following amendments:

37 On page four, subsection 2.12., by striking out the word
38 “commissioner” and inserting in lieu thereof the word
39 “Commissioner”;

40 On page seven, subsection 2.46., by striking out all of
41 subsection 2.46.;

42 On page eight, subsection 3.1.d., by striking out the word
43 “Commissions” and inserting in lieu thereof the word
44 “commission”;

45 On page eight, subdivision 3.2.b., by striking out all of
46 subdivision 3.2.b. and inserting in lieu thereof a new
47 subdivision 3.2.b. to read as follows:

48 “3.2.b. EMS agencies shall collect, maintain and report
49 accurate patient data for all EMS incidents. Agencies shall
50 complete a patient care report (PCR) for all EMS incidents.
51 PCRs shall be complete and submitted to the West Virginia
52 Prehospital Information System (PreMIS) following the
53 conclusion of providing EMS services to a patient, in
54 accordance with policies and guidelines established by
55 OEMS.”;

56 On page nine, subdivision 3.2.c., by striking out the
57 words “a minimum written patient handoff report,” and
58 inserting in lieu thereof the words “at a minimum a patient
59 handoff report”;

60 On page fourteen, subdivision 4.23.a., by striking out all
61 of subdivision 4.23.a. and inserting in lieu thereof a new
62 subdivision 4.23.a. to read as follows:

63 “4.23.a. The EMS agency has a rapid response program
64 which routinely places trained and equipped personnel on the

65 scene of potential life-threatening emergencies prior to the
66 arrival of an ambulance in accordance with policies and
67 guidelines established by OEMS. Five (5) points; or”;

68 On page fifteen, subdivision 4.27.d., by striking out “of
69 ...”;

70 On page eighteen, paragraph 4.36.b.2., after the word
71 “action” by inserting the word “to”;

72 On page nineteen, subdivision 4.37.h., by striking out the
73 words “event of” and inserting in lieu thereof the words “the
74 event”;

75 On page nineteen, subdivision 4.38.a., by striking out the
76 word “state” and inserting in lieu thereof the word “State”;

77 On page twenty, subdivision 5.1.a., by striking out the
78 words “Ground ambulances shall meet applicable US
79 Government Services Agency KKK-A-1822” and inserting
80 in lieu thereof the words “Unless specified differently herein,
81 ground ambulances shall meet US Government Services
82 Agency KKK-A-1822 or subsequent federally approved”;

83 On page twenty, subdivision 5.1.c., by striking the word
84 “Unites” and inserting in lieu thereof the word “United”;

85 On page twenty-one, subdivison 5.1.i., by striking out the
86 word “be”;

87 On page twenty-one, subdivision 5.1.j., by striking out
88 the words “medication kit and its supplies” and inserting in
89 lieu thereof the words “medications in accordance with
90 policies and guidelines established by OEMS”;

91 On page twenty-two, paragraph 5.1.k.5., by striking out
92 the words “accordance with applicable US Government
93 Services Agency KKK-A-1822 specifications at the time of
94 vehicle manufacture”;

95 On page twenty-three, subdivision 5.3.b., by striking out
96 the words “requirements are” and inserting in lieu thereof the
97 word “is”;

98 On page twenty-three, subdivision 5.3.b., after the words
99 “practice and” by inserting the words “appropriate staff”;

100 On page twenty-three, subsection 5.4., by striking out the
101 words “be a Federal Aviation Administration (FAA) Part 135
102 air carrier certificate holder” and inserting in lieu thereof the
103 words “operate under Federal Aviation Administration
104 (FAA) Part 135 rules”;

105 On page twenty-six, paragraph 5.5.b.7., by striking out
106 the words “requirements are” and inserting the word “is”;

107 On page twenty-six, subsection 5.5.b.7., after the words
108 “practice and” by inserting the words “appropriate staff”;

109 On page twenty-seven, subdivision 6.1.a., by striking out
110 the word “aprimary” and inserting in lieu thereof the word
111 “primary”;

112 On page thirty-three, subdivision 6.9., by striking out the
113 word “establish” and inserting in lieu thereof the word
114 “established”;

115 On page thirty-five, subdivision 7.2.e., by striking out the
116 word “Other” and inserting in lieu thereof the word “other”;

117 On page forty-five, paragraph 8.4.a.1., by striking out
118 “STEMS” and inserting in lieu thereof “OEMS”;

119 On page forty-five, paragraph 8.4.a.2., by striking out
120 “STEMS” and inserting in lieu thereof “OEMS”;

121 On page forty-six, subparagraph 8.4.c.1.A., by striking
122 out “STEMS” and inserting in lieu thereof “OEMS”;

123 On page forty-six, subparagraph 8.4.c.2.E., by striking
124 out “STEMS” and inserting in lieu thereof “OEMS”;

125 On page forty-eight, paragraph 8.5.b.1., by striking out
126 “STEMS” and inserting in lieu thereof “OEMS”;

127 On page fifty, subparagraph 9.1.a.3.A., by striking out
128 “STEMS” and inserting in lieu thereof “OEMS”;

129 On page fifty-one, subparagraph 9.1.b.1.B., by striking
130 out “STEMS” and inserting in lieu thereof “OEMS”;

131 On page fifty-two, subparagraph 9.1.c.2.J., by striking
132 out the words “Assist STEMS in ensuring” and inserting in
133 lieu thereof the word “Ensure”;

134 On page fifty-two, subparagraph 9.1.c.2.N., by striking
135 out “STEMS” and inserting in lieu thereof “OEMS”;

136 On page fifty-two, paragraph 9.1.c.3., by striking out
137 “STEMS” and inserting in lieu thereof “OEMS”;

138 On page fifty-three, subdivision 9.2.a., by striking out
139 “STEMS” and inserting in lieu thereof “OEMS”;

140 On page fifty-four, subparagraph 9.2.a.1.A., striking out
141 both references to “STEMS” and inserting in lieu thereof
142 “OEMS”;

143 On page fifty-four, subparagraph 9.2.a.1.C., by striking
144 out “STEMS” and inserting in lieu thereof “OEMS”;

145 On page fifty-four, subparagraph 9.2.a.1.D., by striking
146 out “STEMS” and inserting in lieu thereof “OEMS”;

147 On page fifty-four, subparagraph 9.2.a.3.E., by striking
148 out “STEMS” and inserting in lieu thereof “OEMS”;

149 On page fifty-four, subparagraph 9.2.a.3.F., by striking
150 out both references to “STEMS” and inserting in lieu thereof
151 “OEMS”;

152 On page fifty-five, paragraph 9.2.a.4, by striking out
153 “STEMS” and inserting in lieu thereof “OEMS”;

154 On page fifty-five, subdivision 10.3.d, by striking out
155 “STEMS” and inserting in lieu thereof “OEMS”;

156 And,

157 On page fifty-six, subsection 10.6, by striking out
158 “STEMS” and inserting in lieu thereof “OEMS”.

159 (f) The legislative rule filed in the state register on the
160 twenty-ninth day of July, two thousand ten, authorized under
161 the authority of section four, article one, chapter sixteen, of
162 this code, relating to the Department of Health and Human
163 Resources (cancer registry, 64 CSR 68), is authorized.

164 (g) The legislative rule filed in the state register on the
165 twenty-ninth day of July, two thousand ten, authorized under
166 the authority of section four, article four-e, chapter sixteen,
167 of this code, modified by the Department of Health and
168 Human Resources to meet the objections of the Legislative
169 Rule-Making Review Committee and refiled in the state
170 register on the third day of January, two thousand eleven,
171 relating to the Department of Health and Human Resources
172 (maternal risk screening, 64 CSR 97), is authorized with the
173 following amendments:

174 On page two, subsection 5.3., after the words “Family
175 Health” by inserting the words “by FAX to (304)957-0176”;

176 And,

177 On page two, subsection 5.3., by deleting the words
178 “BPH/OM/CFH Maternal Risk Screening 350 Capitol Street,
179 Room 427 Charleston, WV 25301”.

180 (h) The legislative rule filed in the state register on the
181 thirtieth day of July, two thousand ten, authorized under the
182 authority of section three, article five-a, chapter seventeen-c,
183 of this code, modified by the Department of Health and
184 Human Resources to meet the objections of the Legislative
185 Rule-Making Review Committee and refiled in the state
186 register on the third day of December, two thousand ten,
187 relating to the Department of Health and Human Resources
188 (safety and treatment program, 64 CSR 98), is authorized
189 with the following amendments:

190 On page one, subsection 1.2., by striking out “17C-SA-3”
191 and inserting in lieu thereof “17C-5A-3”;

192 On page one, after subsection 3.4., by inserting a new
193 subsection 3.5. to read as follows:

194 “3.5. DUI-Any act which would constitute a violation of
195 §17C-5-2.” and renumbering the remaining subsections;

196 On page one, subsection 3.7., by striking out “17C-SA-3”
197 and inserting in lieu thereof “17C-5A-3”;

198 On page two, subsection 4.2., striking out the words
199 “shall first approve any program curriculum used in the
200 program.” and inserting in lieu thereof the words “is also
201 responsible for the development of program standards for
202 individuals involved in the service delivery, for approval of
203 program curriculum and for monitoring of compliance by
204 providers with the standards.”;

205 On page three, subsection 6.1., by striking out the words
206 “in the field of substance abuse” and inserting in lieu thereof
207 the words “who meet requirements as established in the
208 Program Standards published by the Department”;

209 On page three, subsection 6.5., following the word
210 “refinement.” by adding the following: “The Program

211 Coordinator shall, at a minimum, be a Clinical Certified
212 Addictions Counselor.”;

213 On page four, subsection 8.1., after the words “Program
214 Enrollment” by inserting the words “and Level I
215 Component”;

216 On page four, subsection 8.1., by striking out the words
217 “Secretary fee for enrollment in the Program is established by
218 the Secretary.” and inserting in lieu thereof the words “initial
219 fee for enrollment in the Program shall be Four Hundred
220 Dollars (\$400.00).;

221 On page four, subdivision 8.3.a., by striking out the
222 words “at any level and participation in Safety and Treatment
223 programming which is not covered by private or public third-
224 party sponsorship, and which is not eligible for a Community
225 Behavioral Health Center’s charity care funds” and inserting
226 in lieu thereof the words “in the Level 1, Prevention and
227 Education Component as set forth in 5.3 of this rule.”;

228 On page four, subsection 8.4., by striking out all of
229 subsection 8.4. and inserting in lieu thereof a new subsection
230 8.4. to read as follows:

231 “8.4. The Department of Health and Human Resources
232 Safety and Treatment Fund-Upon enrollment in the Program,
233 the Participant shall pay to the provider the sum of Four
234 Hundred Dollars (\$400.00), except for those Participants
235 which are determined under 8.3 to be indigent. The provider
236 shall remit to the Department the sum of Two Hundred
237 Twenty-Five Dollars (\$225.00) and the provider shall retain
238 One Hundred Seventy-Five Dollars (\$175.00). The
239 Department shall deposit One Hundred Twenty-Five Dollars
240 (\$125.00) of this sum in the Department of Health and
241 Human Resources Safety and Treatment Fund, to be used to
242 reimburse providers for their portion of the enrollment fee for
243 persons qualifying for indigent status.”;

244 And,

245 On page four, subsection 8.5., by striking out all of
246 subsection 8.5.

247 (i) The legislative rule filed in the state register on the
248 thirtieth day of July, two thousand ten, authorized under the
249 authority of section eight, article one, chapter forty-four-a, of
250 this code, modified by the Department of Health and Human
251 Resources to meet the objections of the Legislative Rule-
252 Making Review Committee and refiled in the state register on
253 the third day of December, two thousand ten, relating to the
254 Department of Health and Human Resources (requirements
255 for licensure of nonprofit corporations for conservator
256 service, 64 CSR 99), is authorized with the following
257 amendments:

258 On page one, subsection 3.6., after the word “directors”
259 by inserting the words “of the Corporation”;

260 On page two, subsection 3.7., after the word “directors”
261 by inserting the words “of the Corporation”;

262 On page two, subsection 3.12., after the word “of” by
263 inserting the words “The Department of”;

264 On page four, subdivision 4.2.5., after the word “if” by
265 inserting the words “he or”;

266 On page five, subdivision 4.7.3., by striking out the
267 words “approved, modified or rejected” and inserting in lieu
268 thereof the words “approve, modify or reject”;

269 On page six, subdivision 4.8.2, by striking out all of
270 subdivision 4.8.2.. and inserting in lieu thereof a new
271 subsection 4.8.2., to read as follows:

272 “4.8.2. Reports of the Secretary of any inspection or
273 investigation shall, when appropriate, specify the nature of

274 any deficiency in compliance with this rule or law and
275 specifically indicate the rule or law violated.”;

276 And,

277 On page seven, subsection 5.3., after the words “under
278 this rule,” by striking out the word “the” and inserting in lieu
279 thereof the word “and”.

§64-5-2. Health Care Authority.

1 The legislative rule filed in the state register on the
2 twenty-eighth day of July, two thousand ten, authorized
3 under the authority of section eight-c, article two-d, chapter
4 sixteen, of this code, modified by the Health Care Authority
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the state register on the
7 eighth day of December, two thousand ten, relating to the
8 Health Care Authority to promulgate a legislative rule
9 relating to (certificates of need, 65 CSR 7), is authorized with
10 the following amendments:

11 On page three, subdivisions 2.14.e. and 2.14.f., by striking
12 out all of subdivisions 2.14.e. and 2.14.f. and inserting in lieu
13 thereof a new subdivision 2.14.e to read as follows:

14 “2.14.e. Notwithstanding anything in this subsection 2.14
15 to the contrary, any practice granted a determination of
16 nonreviewability as a private office practice by the board on
17 or before July 1, 2010, is and shall remain a private office
18 practice under the Act; provided there has been no material
19 change in the facts and circumstances provided in the original
20 request for determination of reviewability.”

CHAPTER 111

**(Com. Sub. for H. B. 2613 - By Delegates
Brown, D. Poling, Fleischauer and Talbott)**

[Passed February 28, 2011; in effect from passage.]
[Approved by the Governor on March 9, 2011.]

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 Governor's Committee on Crime, Delinquency and Correction to promulgate legislative rules relating to Protocol for Law Enforcement Response to Domestic Violence, (149 CSR 3) and Law Enforcement Training Standards, (149 CSR 2).

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. Governor's Committee on Crime, Delinquency and
Correction.**

1 (a) The legislative rule filed in the state register on July
2 27, 2010, authorized under the authority of section one
3 thousand one hundred and two, article twenty-seven, chapter
4 forty-eight, of this code, modified by the Governor's
5 Committee on Crime, Delinquency and Correction to meet
6 the objections of the Legislative Rule-Making Review
7 Committee and refiled in the state register on November 22,
8 2010, relating to the Governor's Committee on Crime,
9 Delinquency and Correction (protocol for law-enforcement
10 response to domestic violence, 149 CSR 3), is authorized,
11 with the following amendment:

12 On page nineteen, section seven, subsection three, by
13 striking subdivision 7.3.5. in its entirety and re-designating
14 the remaining subdivisions accordingly.

15 (b) The legislative rule filed in the state register on July
16 23, 2010, authorized under the authority of section three,
17 article twenty-nine, chapter thirty, of this code, modified by
18 the Governor's Committee on Crime, Delinquency and
19 Correction to meet the objections of the Legislative Rule-
20 Making Review Committee and refiled in the state register on
21 October 13, 2010, relating to the Governor's Committee on
22 Crime, Delinquency and Correction (law-enforcement
23 training standards, 149 CSR 2), is authorized.

CHAPTER 112

**(Com. Sub. for S. B. 177 - By Senators
Minard, Snyder, Prezioso, Unger,
Boley and K. Facemyer)**

[Passed March 12, 2011; in effect from passage.]

[Approved by the Governor on April 4, 2011.]

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 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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the commercial patent incentives tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the exchange of information agreement between the State Tax Department and the West Virginia Lottery; authorizing the State Tax Department to promulgate a legislative rule relating to the exchange of information agreement between the State

Tax Department and the Office of the State Fire Marshal; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit life insurance, credit accident and sickness insurance and credit unemployment insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to suitability in annuity transactions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance adjusters; 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 property and casualty actuarial opinions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit personal property; authorizing the Insurance Commissioner to promulgate a legislative rule relating to self-insurance pools for political subdivisions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to valuation of life insurance companies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to recognition of preferred mortality tables for use in determining minimum reserve liabilities; authorizing the Insurance Commissioner to promulgate a legislative rule relating to professional employer organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to health maintenance organization point of service option; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensed retailer operations; and authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensing of retail outlets.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF
REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the state register on July
2 28, 2010, authorized under the authority of section ten, article
3 thirteen-aa, chapter eleven of this code, modified by the State
4 Tax Department to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the state
6 register on November 5, 2010, relating to the State Tax
7 Department (commercial patent incentives tax credit, 110
8 CSR 13Q), is authorized.

9 (b) The legislative rule filed in the state register on July
10 26, 2010, authorized under the authority of section five-s,
11 article ten, chapter eleven of this code, relating to the State
12 Tax Department (exchange of information agreement
13 between the State Tax Department and the West Virginia
14 Lottery, 110 CSR 50E), is authorized.

15 (c) The legislative rule filed in the state register on July
16 26, 2010, authorized under the authority of section five-s,
17 article ten, chapter eleven of this code, modified by the State
18 Tax Department to meet the objections of the Legislative
19 Rule-Making Review Committee and refiled in the state
20 register on November 5, 2010, relating to the State Tax
21 Department (exchange of information agreement between the
22 State Tax Department and the Office of the State Fire
23 Marshal, 110 CSR 50F), is authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the state register on July
2 27, 2010, authorized under the authority of section three,
3 article two, chapter thirty-three of this code, modified by the
4 Insurance Commissioner to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the state register on September 28, 2010, relating to the
7 Insurance Commissioner (credit life insurance, credit
8 accident and sickness insurance and credit unemployment
9 insurance, 114 CSR 6), is authorized with the following
10 amendment:

11 On pages one and two, section 2, by striking out all of
12 section 2. and inserting in lieu thereof a new section 2. to
13 read as follows:

“§114-6-2. Definitions.

1 (1) “Commissioner” means the West Virginia Insurance
2 Commissioner.

3 (2) “Credit Accident and Sickness Insurance” means
4 insurance on a debtor to provide indemnity for payments
5 becoming due on a specific loan or other credit transaction
6 while the debtor is disabled as defined in the policy.

7 (3) “Credit Life Insurance” means insurance on the life
8 of a debtor pursuant to or in connection with a specific loan
9 or other credit transaction.

10 (4) “Credit unemployment insurance” means insurance
11 on a debtor to provide indemnity for payments becoming due
12 on a specific loan or other credit transaction while the debtor
13 is unemployed as defined in the policy.

14 (5) “Creditor” means the lender of money or vendor or
15 lesser goods, services, or property, rights or privileges, for
16 which payment is arranged through a credit transaction, or
17 any successor to the right, title or interest of any such lender,
18 vendor, or lessor, and an affiliate, associate or subsidiary of
19 them or any director, officer, or employee of any of them or
20 any other person in any way associated with any of them.

21 (6) “Debtor” means a borrower of money or purchaser or
22 lessee of goods, services, property, rights or privileges for
23 which payment is arranged through a credit transaction.

24 “Indebtedness” means the total amount payable by a debtor
25 to a creditor in connection with a loan or other credit
26 transaction.

27 (7) “Indebtedness” means the total amount payable by a
28 debtor to a creditor in connection with a loan or other credit
29 transaction.”

30 (b) The legislative rule filed in the state register on July
31 29, 2010, authorized under the authority of section ten, article
32 two, chapter thirty-three of this code, relating to the
33 Insurance Commissioner (suitability in annuity transactions,
34 114 CSR 11B), is authorized.

35 (c) The legislative rule filed in the state register on July
36 27, 2010, authorized under the authority of section three,
37 article two, chapter thirty-three of this code, modified by the
38 Insurance Commissioner to meet the objections of the
39 Legislative Rule-Making Review Committee and refiled in
40 the state register on October 20, 2010, relating to the
41 Insurance Commissioner (insurance adjusters, 114 CSR 25),
42 is authorized with the following amendments:

43 On page two, subsection 3.1., by striking out all of
44 subsection 3.1. and inserting in lieu thereof a new subsection
45 3.1. to read as follows:

46 “3.1. No person shall in West Virginia act as or hold
47 himself to be an adjuster unless licensed by the
48 Commissioner. As used in the rule, the term “person” shall
49 not include those persons located in an office of an insurer
50 outside the State of West Virginia who adjust claims solely
51 by telephone, fax, United States Mail and electronic mail and
52 who do not physically enter the State of West Virginia in the
53 course of adjusting such claims.”;

54 And,

55 On page four, subdivision 3.2.j., by striking out all of
56 subdivision 3.2.j. and renumbering the remaining
57 subdivisions.

58 (d) The legislative rule filed in the state register on July
59 29, 2010, authorized under the authority of section three,
60 article two, chapter thirty-three of this code, modified by the
61 Insurance Commissioner to meet the objections of the
62 Legislative Rule-Making Review Committee and refiled in
63 the state register on September 28, 2010, relating to the
64 Insurance Commissioner (long-term care insurance, 114 CSR
65 32), is authorized with the following amendments:

66 On page 51, paragraph 29.4.c.1., by striking out all of
67 paragraph 29.4.c.1. and inserting in lieu thereof a new
68 paragraph 29.4.c.1. to read as follows:

69 “29.4.c.1. Within five (5) business days of receiving a
70 written request for independent review, the insurer shall
71 choose an independent review organization approved or
72 certified by the state. The insurer shall vary its selection of
73 authorized independent review organizations on a rotating
74 basis.”;

75 On page fifty-two, paragraph 29.4.c.6., by striking out the
76 word “8,” and inserting in lieu thereof the word “3,”;

77 And,

78 On page fifty-six, subsection 30.6., by striking out all of
79 subsection 30.6.

80 (e) The legislative rule filed in the state register on July
81 27, 2010, authorized under the authority of section three,
82 article two, chapter thirty-three of this code, relating to the
83 Insurance Commissioner (actuarial opinion and
84 memorandum, 114 CSR 41), is authorized.

85 (f) The legislative rule filed in the state register on July
86 27, 2010, authorized under the authority of section three,
87 article two, chapter thirty-three of this code, modified by the
88 Insurance Commissioner to meet the objections of the
89 Legislative Rule-Making Review Committee and refiled in
90 the state register on December 1, 2010, relating to the
91 Insurance Commissioner (property and casualty actuarial
92 opinions, 114 CSR 41A), is authorized.

93 (g) The legislative rule filed in the state register on July
94 27, 2010, authorized under the authority of section three,
95 article two, chapter thirty-three of this code, relating to the
96 Insurance Commissioner (credit personal property, 114 CSR
97 61), is authorized.

98 (h) The legislative rule filed in the state register on July
99 27, 2010, authorized under the authority of section three,
100 article two, chapter thirty-three of this code, modified by the
101 Insurance Commissioner to meet the objections of the
102 Legislative Rule-Making Review Committee and refiled in
103 the state register on December 1, 2010, relating to the
104 Insurance Commissioner (self-insurance pools for political
105 subdivisions, 114 CSR 65), is authorized with the following
106 amendment:

107 On pages ten and eleven, subsection 8.1., by striking out
108 all of subsection 8.1. and inserting in lieu thereof a new
109 subsection 8.1. to read as follows:

110 “8.1. To the extent not inconsistent with this rule, each
111 workers’ compensation pool is subject to the requirements of
112 *West Virginia Code* §§33-2-21 and 33-2-22 and *West*
113 *Virginia Code* Chapter Twenty-Three and the rules
114 promulgated thereunder, including but not limited to the
115 payment of surcharges pursuant to *West Virginia Code* §§23-
116 2C-3(f)(2) and 23-2C-3(f)(3)(B) and *West Virginia Code* St.
117 R. Section 85-6-1 *et seq.*; the record retention requirements
118 of *West Virginia Code* St. R. Section 85-18-13; and the data
119 requirements of *West Virginia Code* St. R. Section 85-2-1 *et*
120 *seq.*: *Provided*, That such a pool is subject to *West Virginia*
121 *Code* St. R. Section 85-18-1 *et seq.*; as if the pool was a
122 single self-insured employer: *Provided*, however, That no
123 provision of Chapter Twenty-Three of this code or any rule
124 promulgated thereunder requiring participation in the self-
125 insured guarantee risk pool and the self-insured security risk
126 pool, or providing for industrial council approval of self-
127 insured status, termination of self-insured status or approval
128 of security, shall apply.”

129 (i) The legislative rule filed in the state register on July
130 27, 2010, authorized under the authority of section three,
131 article two, chapter thirty-three of this code, relating to the
132 Insurance Commissioner (valuation of life insurance
133 companies, 114 CSR 68), is authorized.

134 (j) The legislative rule filed in the state register on July
135 27, 2010, authorized under the authority of section three,
136 article two, chapter thirty-three of this code, relating to the
137 Insurance Commissioner (recognition of preferred mortality
138 tables for use in determining minimum reserve liabilities, 114
139 CSR 69A), is authorized.

140 (k) The legislative rule filed in the state register on July
141 27, 2010, authorized under the authority of section three,
142 article two, chapter thirty-three of this code, relating to the
143 Insurance Commissioner (professional employer organizations,
144 114 CSR 85), is authorized.

145 (l) The legislative rule filed in the state register on July
146 27, 2010, authorized under the authority of section three,
147 article two, chapter thirty-three of this code, relating to the
148 Insurance Commissioner (health maintenance organization
149 point of service option, 114 CSR 91), is authorized.

§64-7-3. Racing Commission.

1 (a) The legislative rule filed in the state register on July
2 27, 2010, authorized under the authority of section six, article
3 twenty-three, chapter nineteen of this code, modified by the
4 Racing Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the state
6 register on January 20, 2011, relating to the Racing
7 Commission (thoroughbred racing, 178 CSR 1), is authorized
8 with the following amendments:

9 On page forty-two, subdivision 26.4.q., by striking out
10 subdivision 26.4.q. in its entirety and inserting in lieu thereof
11 a new subdivision 26.4.q. to read as follows:

12 “26.4.q. No trainer shall move or permit to be moved
13 any horse or horses under his or her custody, care or control
14 into the association’s grounds without permission from the
15 association’s racing secretary or his or her designee. No
16 trainer shall move or permit to be moved any horse or horses
17 under his or her custody, care or control out of the
18 association’s grounds without first signing out the horse on
19 a form prescribed by the association and made available at
20 the stable gate: *Provided*, That for all horses stabled on the
21 association grounds, permission is required from the

22 association's racing secretary or his or her designee at the
23 time of removal if the horse is entered to race or may be
24 entered to race at another racetrack during a period of seven
25 (7) days following the day of its removal from the
26 association's grounds. No trainer shall move or permit to be
27 moved any horse or horses under his or her custody, care or
28 control into the association's grounds without presenting a
29 current negative Coggins test for equine infectious anemia
30 (EIA).";

31 On page fifty-six, subdivision 42.3.a., by striking out the
32 words "eighteen (118)" and inserting in lieu thereof the
33 words "sixteen (116)";

34 And,

35 On page sixty-nine, subdivision 48.2.d., by striking out
36 subdivision 48.2.d. in its entirety and inserting in lieu thereof
37 a new subdivision 48.2.d. to read as follows:

38 "48.2.d. Practicing veterinarians shall not have contact
39 with an entered horse on a race day except for the
40 administration of furosemide (lasix®) under the guidelines
41 set forth in subsection 49.7. of this rule unless approved by
42 a Racing Commission veterinarian. If approval to have
43 contact with an entered horse on race day for purposes other
44 than the administration of furosemide (lasix®) is obtained
45 from a Racing Commission veterinarian, or if reasonable
46 efforts are made to contact a Racing Commission veterinarian
47 and he or she is unavailable, a practicing veterinarian may
48 have contact with the horse for purposes other than the
49 administration of furosemide (lasix®): *Provided*, That the
50 practicing veterinarian shall complete a form prescribed by
51 the Racing Commission notifying the Racing Commission
52 veterinarian of the contact. Such form shall be provided to
53 the Racing Commission veterinarian one hour before post
54 time."

55 (b) The legislative rule filed in the state register on July
56 30, 2010, authorized under the authority of section six, article
57 twenty-three, chapter nineteen of this code, modified by the
58 Racing Commission to meet the objections of the Legislative
59 Rule-Making Review Committee and refiled in the state
60 register on January 20, 2011, relating to the Racing
61 Commission (greyhound racing, 178 CSR 2), is authorized.

62 (c) The legislative rule filed in the state register on July
63 16, 2010, authorized under the authority of section six, article
64 twenty-three, chapter nineteen of this code, modified by the
65 Racing Commission to meet the objections of the Legislative
66 Rule-Making Review Committee and refiled in the state
67 register on January 20, 2011, relating to the Racing
68 Commission (pari-mutuel wagering, 178 CSR 5), is
69 authorized, with the following amendment:

70 On page two, subsection 2.21, line 5, by striking out the
71 word “totalizator” and inserting in lieu thereof the word
72 “totalisator”.

§64-7-4. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the state register on
2 November 20, 2009, authorized under the authority of section
3 six, article three-a, chapter sixty of this code, modified by the
4 Alcohol Beverage Control Commission to meet the
5 objections of the Legislative Rule-making Review
6 Committee and refiled in the state register on January 20,
7 2011, relating to the Alcohol Beverage Commission (licensed
8 retailer operations, 175 CSR 1), is authorized with the
9 following amendment:

10 On pages seven and eight, paragraph 4.1.a.3., by striking
11 out all of paragraph 4.1.a.3. and inserting in lieu thereof a
12 new paragraph 4.1.a.3. to read as follows:

13 “4.1.a.3. Column 2 - “Unit Size.” The product bottle size
14 is listed in metric measurement.

15 Metric Conversion Table

16	Metric Size	Converted to Ounces
17	50 ml.	1.7 oz.
18	200 ml.	6.8 oz.
19	375 ml.	12.7 oz.
20	500 ml.	16.9 oz.
21	750 ml.	25.4 oz.
22	1. Liter	33.8 oz.
23	1.75 Liter	59.2 oz.”

24 (b) The legislative rule filed in the state register on
25 February 22, 2010, authorized under the authority of section
26 six, article three-a, chapter sixty of this code, modified by the
27 Alcohol Beverage Control Commission to meet the
28 objections of the Legislative Rule-making Review
29 Committee and refiled in the state register on January 19,
30 2011, relating to the Alcohol Beverage Commission
31 (licensing of retail outlets, 175 CSR 5), is authorized.



CHAPTER 113

**(Com. Sub. for H. B. 2586 - By Delegates
Brown, D. Poling, Fleischauer and Talbott)**

[Passed March 8, 2011; in effect from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of

Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the 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 the Commissioner of Highways to promulgate legislative rules relating to the use of state road rights of way and adjacent areas (157 CSR 6) the transportation of hazardous wastes upon the roads and highways (157 CSR 7), and Community Empowerment Transportation Act Program (157 CSR 10); authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the Motor Vehicle Inspection Manual (91 CSR 12); and authorizing the Department of Transportation - State Rail Authority to promulgate a legislative rule relating to the valuation of used rolling stock and equipment (172 CSR 2).

Be it enacted by the Legislature of West Virginia:

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

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

§64-8-1. Commissioner of Highways.

- 1 (a) The legislative rule filed in the state register on the
- 2 sixteenth day of July, two thousand ten, authorized under the
- 3 authority of section one, article twenty, chapter seventeen, of
- 4 this code, relating to the Commissioner of Highways (use of
- 5 state road rights of way and adjacent areas, 157 CSR 6), is
- 6 authorized.

7 (b) The legislative rule filed in the state register on the
8 sixteenth day of July, two thousand ten, authorized under the
9 authority of section seven, article eighteen, chapter twenty-
10 two, of this code, relating to the Commissioner of Highways
11 (transportation of hazardous wastes upon the roads and
12 highways, 157 CSR 7), is authorized.

13 (c) The legislative rule filed in the state register on the
14 twenty-seventh day of July, two thousand ten, authorized
15 under the authority of section four, article twenty-eight,
16 chapter seventeen, of this code, modified by the
17 Commissioner of Highways to meet the objections of the
18 Legislative Rule-Making Review Committee and refiled in
19 the state register on the twenty-second day of November two
20 thousand ten, relating to the Commissioner of Highways
21 (Community Empowerment Transportation Act Program, 157
22 CSR 10), is authorized with the following amendments:

23 On page six, section eight, line five, by striking out the
24 citation “§22-5-1” and inserting in lieu thereof the citation
25 “§5-22-1”; and

26 On page six, section nine, line eight, by striking out the
27 words “Committee on Government and Finance”.

§64-8-2. Division of Motor Vehicles.

1 The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand ten, authorized under
3 the authority of section four, article sixteen, chapter
4 seventeen-c, of this code, relating to the Division of Motor
5 Vehicles (Motor Vehicle Inspection Manual, 91 CSR 12), is
6 authorized.

§64-8-3. Department of Transportation.

1 The legislative rule filed in the state register on the
2 thirteenth day of May, two thousand ten, authorized under the

3 authority of section six, article eighteen, chapter twenty-nine,
4 of this code, relating to the Department of Transportation -
5 State Rail Authority (valuation of used rolling stock and
6 equipment, 172 CSR 2), is authorized.

CHAPTER 114

**(Com. Sub. for H. B. 2639 - By Delegates
Brown, D. Poling, Fleischauer, Talbott,
Overington and Sobonya)**

[Amended and again passed, in an effort to meet the objections of
the Governor, March 18, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

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 Pharmacy to promulgate a legislative rule relating to the licensure and the

practice of pharmacy (15 CSR 1); authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring (15 CSR 8); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions (16 CSR 1); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapists and physical therapist assistants (16 CSR 4); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions for athletic trainers (16 CSR 5); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for athletic trainers (16 CSR 6); authorizing the Board of Sanitarians to promulgate a legislative rule relating to an interim fee schedule (20 CSR 3); authorizing the Board of Sanitarians to promulgate a legislative rule relating to the practice of public health sanitation (20 CSR 4); authorizing the Secretary of State to promulgate a legislative rule relating to the combined voter registration and driver licensing fund (153 CSR 25); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians (3 CSR 1); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to qualifications, training, examination of instructors (3 CSR 2); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to operational standards for schools of barbering and beauty culture (3 CSR 4); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule titled schedule of fees (3 CSR 6); authorizing the Commissioner of Agriculture to promulgate a legislative rule titled the West Virginia Apiary Rule (61 CSR 2); authorizing the repeal of the Commissioner of Agriculture's legislative rule relating to general groundwater protection for fertilizers and manures (61 CSR 6C); authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry (61 CSR 16); authorizing the Board of Veterinary Medicine to promulgate a

legislative rule relating to the organization, operation and licensing of veterinarians (26 CSR 1); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians (26 CSR 3); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the standards of practice (26 CSR 4); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians (26 CSR 5); authorizing the Board of Veterinary Medicine to promulgate a legislative rule titled schedule of fees (26 CSR 6); authorizing the Board of Optometry to promulgate a legislative rule titled rules of the West Virginia Board of Optometry (14 CSR 1); authorizing the Board of Optometry to promulgate a legislative rule relating to oral pharmaceutical prescriptive authority (14 CSR 2); authorizing the Board of Optometry to promulgate a legislative rule titled schedule of fees (14 CSR 5); authorizing the Board of Optometry to promulgate a legislative rule relating to examination and scoring policy (14 CSR 6); authorizing the Board of Optometry to promulgate a legislative rule relating to licensure by endorsement (14 CSR 8); authorizing the Board of Optometry to promulgate a legislative rule relating to contact lenses that contain and deliver pharmaceutical agents (14 CSR 9); authorizing the Board of Optometry to promulgate a legislative rule relating to continuing education (14 CSR 10); authorizing the Board of Optometry to promulgate a legislative rule relating to injectable pharmaceutical agents (14 CSR 11); authorizing the Board of Osteopathy to promulgate a legislative rule relating to osteopathic assistants (24 CSR 2); authorizing the Board of Osteopathy to promulgate a legislative rule relating to fees for services rendered by the Board (24 CSR 5); authorizing the Treasurer's Office to promulgate a legislative rule relating to the establishment of imprest funds (112 CSR 3); and authorizing the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Financing Pilot Program (146 CSR 5).

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§64-9-1. Board of Pharmacy.

1 (a) The legislative rule filed in the state register on July
2 29, 2010, authorized under the authority of section five,
3 article nine, chapter sixty-a, of this code, relating to the
4 Board of Pharmacy (licensure and the practice of pharmacy,
5 15 CSR 1), is authorized with the following amendments:

6 On page thirty-seven, subsection 21.1, by striking out all
7 of subsection 21.1 and inserting in lieu thereof a new
8 subsection 21.1 to read as follows:

9 “21.1. A prescription to be valid, shall be issued for a
10 legitimate medical purpose by a practitioner acting within the
11 course of legitimate professional practice, and shall bear the
12 preprinted, stamped, typed, or manually printed name,
13 address and telephone number of the prescribing practitioner.
14 If it is a prescription for a controlled substance listed in
15 Schedules II through V, then it shall also contain the
16 prescriber’s DEA registration number, including any suffix.
17 The National Provider Identification (NPI) number shall be
18 required on all valid prescriptions beginning January 1,
19 2012.”

20 And,

21 On page forty-seven, after subsection 26.1, by adding a
22 new section 27 to read as follows:

“15-1-27. West Virginia Official Prescription Paper Program Rules.

1 27.1. The purpose of this section is to establish rules for
2 the West Virginia Official Prescription Program Act set forth
3 at West Virginia Code Section §16-5W-1, et seq. for use in
4 writing prescriptions by practitioners.

5 27.2. Definitions. As used in this rule:

6 a. “Program Vendor” means the private contractor or
7 contractors selected to manage the production and delivery of
8 official state prescription paper.

9 b. “West Virginia Official Prescription Paper” means
10 prescription paper, which has been authorized by the state for
11 use, and meets the following criteria:

12 1. Prevention of unauthorized copying;

13 2. Prevention of erasure or modification;

14 3. An ability to prevent counterfeit prescription pads; and

15 4. Capable of supporting automated validation through
16 pharmacy claims processing systems using the official state
17 prescription control number.

18 27.3. Minimum Requirements of West Virginia Official
19 Prescription Paper. The prescription paper shall contain the
20 following security features:

21 a. Shall meet all requirements issued by the Center for
22 Medicare and Medicaid Services for a written prescription for
23 controlled substances as required by Section 2002(b) of PL.
24 110-28 of the Iraq War Supplemental Appropriations Bill
25 enacted by the United States Congress in 2007;

26 b. Shall contain six (6) quantity check-off boxes printed
27 on the form and in the following quantities shall appear:

28 1. 1-24;

29 2. 25-49;

30 3. 50-74;

31 4. 75-100;

32 5. 101-150; and

33 6. 151 and over:

34 *Provided*, That if the blank has the quantity prescribed
35 electronically printed in both numeric and word format, then
36 the quantity check-off boxes shall not be necessary;

37 c. Shall contain space for the prescriber to indicate
38 number of refills, if any, or to indicate no refills;

39 d. Shall provide space for the patient's name and address,
40 the prescribing practitioner's signature;

41 e. Shall provide space for the preprinted, stamped, typed,
42 or manually printed name, address and telephone number of
43 the prescribing practitioner, and the practitioner's DEA
44 registration number and NPI number;

45 f. Shall contain the following statement printed on the
46 bottom of the prescription blank: "This prescription may be
47 filled with a generically equivalent drug product unless the
48 words 'Brand Medically Necessary' are written in the
49 practitioner's own handwriting, on this prescription form.";
50 and

51 g. Each blank must be numbered on the face with a
52 unique identifying control number in both human readable
53 and barcode format.

54 27.4. The Board will solicit open bids and select a vendor
55 or vendors to provide West Virginia Official Prescription
56 Paper and maintain appropriate records of such product
57 supplied to practitioners based on ability of proposed
58 program to prevent prescription fraud, price and ability to
59 meet these requirements.

60 a. Practitioners licensed to practice in this State may
61 purchase West Virginia Official Prescription Paper as per
62 individual orders from the selected vendor(s). The cost of the
63 Official Prescription Paper will be borne by the ordering
64 practitioner/institution, unless the state is successful in
65 securing offsetting funds such as federal grants, risk/reward
66 programs or private funding applied for and received by the
67 state for the express purpose of partially or fully funding the
68 West Virginia Official Prescription Program.

69 b. Orders shall be placed through a vendor supplied
70 secure on-line order capture system or on an order form to be
71 supplied by the Vendor, and must contain the requesting
72 practitioner's name, specialty, primary address and other
73 practice site address(s), Federal DEA registration number, if
74 any, National Provider Identification number, the State
75 professional practice license number, number of prescriptions
76 requested, and shall be signed by the requesting practitioner.

77 c. Records of West Virginia Official Prescription Paper
78 supplied to practitioners will be maintained by the vendor or
79 vendors and will be subject to random and regular audits.
80 Discrepancies shall be reported to the Board in a regular and
81 timely manner.

82 27.5. On and after January 1, 2012 every written
83 prescription written in West Virginia by a practitioner shall

84 be written on West Virginia Official Prescription Paper. A
85 pharmacist may not fill a written prescription from a West
86 Virginia practitioner unless issued upon an official state
87 issued prescription form.

88 27.6. Practitioners; control and reporting of West
89 Virginia Official Prescription Paper.

90 a. Adequate safeguards and security measures shall be
91 undertaken by practitioners holding West Virginia Official
92 Prescription Paper to assure against the loss, destruction, theft
93 or unauthorized use of the forms. The forms may be used
94 only by the practitioner to whom they are issued and are not
95 transferable.

96 b. The Practitioner must also notify the vendor of any
97 failure to receive Official Prescription Paper within a
98 reasonable time after ordering them. Further, practitioners
99 must immediately notify the Board and vendor in writing of
100 the loss through destruction, theft or loss, or unauthorized use
101 of any Official Prescription Paper blanks, including:

102 1. Estimated number of blanks affected;

103 2. Control numbers if available; and

104 3. Suspected reason for destruction, theft, or loss.

105 c. The program vendor must provide annual SAS70 or
106 SSAE16 third party audits of the prescription paper
107 printing/personalization facility used in the preparation and
108 distribution of West Virginia Official Prescription Paper
109 blanks upon request. The program vendor must be able to
110 provide such report for each year and for two years prior to
111 the term of the contract.”

112 (b) The legislative rule filed in the state register on July
113 29, 2010, authorized under the authority of section five,

114 article nine, chapter sixty-a, of this code, relating to the
115 Board of Pharmacy (controlled substances monitoring, 15
116 CSR 8), is authorized with the following amendments:

117 On page two, subsection 2.15, by striking out the words
118 “15-1-27 of the West Virginia Code of State Rules” and
119 inserting in lieu thereof the word “5”;

120 On page six, subdivision 7.3(b), by striking out all of
121 subdivision 7.3(b) and inserting in lieu thereof a new
122 subdivision 7.3(b) to read as follows:

123 “(b) Members of the West Virginia State Police expressly
124 authorized by the superintendent of the West Virginia State
125 Police to have access to the information;”

126 On page six, subdivision 7.3(e), after the word “(e)”, by
127 striking out the word “The” and inserting in lieu thereof the
128 word “the”;

129 On page six, subdivision 7.3(f), after the word “(f)” by
130 striking out the word “A” and inserting in lieu thereof the
131 word “a”;

132 On page six, subdivision 7.3(g), by striking out the word
133 “board” and inserting in lieu thereof the word “Board”;

134 On page six, subdivision 7.3(j), by striking out the word
135 “date” and inserting in lieu thereof the word “data”;

136 On page six, subsection 7.4, by striking out the word
137 “board” and inserting in lieu thereof the word “Board”;

138 And,

139 On page six, subsection 7.4, after the words “subsection
140 7.3” by inserting the words “(a) through (i)”.

§64-9-2. Physical Therapy.

1 (a) The legislative rule filed in the state register on July
2 30, 2010, authorized under the authority of section six, article
3 twenty, chapter thirty, of this code, modified by the Board of
4 Physical Therapy to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the state
6 register on December 21, 2010, relating to the Board of
7 Physical Therapy (general provisions, 16 CSR 1), is
8 authorized with the following amendments:

9 On page two, by striking 2.15a in its entirety and
10 inserting in lieu thereof the following:

11 “2.15.a. A physical therapy aide works under the direct
12 supervision of a physical therapist: *Provided*, That a physical
13 therapist assistant may directly supervise a physical therapy
14 aide in emergency situations necessary to provide patient
15 safety.”

16 On page 3, by striking out section 5 in its entirety and
17 inserting in lieu thereof the following:

§16-1-5. Issuance, Renewal or Reinstatement of License.

1 5.1. The Board reserves the right to evaluate the applicant
2 according to the testing, licensure, and procedural
3 requirements as initiated by the agency responsible for the
4 ownership and development of the national exam.

5 5.2. Licenses expiring on December 31, of each particular
6 year must be renewed by payment of applicable fee along
7 with completed renewal application.

8 5.3. A license not renewed without specific request to
9 place it in “inactive” status will automatically be placed on
10 delinquent status.

11 5.4. Delinquent licensee is responsible for penalty fees
12 including but not limited to: application fee, delinquent
13 license fee, and the current year renewal fee. A licensee must
14 also complete and show proof of Board approved continuing
15 education requirements.

16 5.5. To reinstate an “inactive” license, the licensee must
17 submit an application for renewal along with a non-
18 refundable application fee and license renewal fee.

19 5.6. A volunteer license will be marked as a “volunteer”
20 license and is restricted to practicing in accordance with §30-
21 20-13.

22 5.7. Any change in personal contact and
23 employer/supervisor information must be submitted in
24 writing to the Board as changes occur.”

25 On page 4, by striking out subsection 6.1 in its entirety
26 and inserting in lieu thereof the following:

27 “6.1. An individual possessing a temporary permit issued
28 by the Board to practice Physical Therapy or act as a physical
29 therapist assistant in the State of West Virginia shall practice
30 under the on-site supervision of a Physical Therapist. All
31 progress notes written by the Physical Therapist or physical
32 therapist assistant with a temporary permit shall be cosigned
33 by a Physical Therapist supervisor within twenty-four (24)
34 hours.”

35 On page six, by inserting a new subsection 7.7, to read as
36 follows:

37 “7.7. A licensee must report to the board any discipline
38 received in another jurisdiction within 30 days of that
39 discipline. The Board reserves the right to discipline up to
40 and including revocation of a license until disciplinary

41 process in the other jurisdiction is completed. If the licensee
42 fails to report discipline in another jurisdiction, they are
43 subject to disciplinary procedures in our jurisdiction
44 determined by the Board.”

45 On page seven, by striking subdivision 8.2.a., in its
46 entirety and inserting in lieu thereof the following:

47 “8.2.a. When care is delivered in a hospital or other
48 acute-care center, free-standing, outpatient, or independent
49 practice setting, a Physical Therapist must provide on-site
50 supervision, with the exception that general supervision is
51 permitted in a hospital or other acute-care center,
52 free-standing, outpatient, or independent practice setting 40%
53 of the time once the physical therapist assistant performing
54 treatment has at least 1000 hours of experience. The
55 supervising physical therapist shall document when general
56 supervision is utilized under this subdivision.”

57 On page seven, by striking out subdivision 8.2.b., in its
58 entirety and inserting in lieu thereof the following:

59 “8.2.b. General supervision may be utilized when care is
60 delivered in a skilled/unskilled nursing facility, distinct part
61 skilled/unskilled nursing unit or swing-bed unit in an
62 acute-care hospital, home health, or school system setting,
63 and the following requirements must be observed and
64 documented in the patient records when general supervision
65 is used:”

66 On page seven, by striking out subparagraph 8.2.b.1 in its
67 entirety and inserting in lieu thereof the following:

68 “8.2.b.1. A physical therapist must be accessible by
69 telecommunications to the physical therapist assistant at all
70 times that the physical therapist assistant is treating patients;
71 and available to make a joint onsite visit with the physical

72 therapist assistant within 24 hours as prudent practice
73 indicates.”

74 On page seven, by striking out subparagraph 8.2.b.2 in its
75 entirety and inserting in lieu thereof the following:

76 “8.2.b.2. The physical therapist must visit the patient at
77 least once every 10 physical therapist assistant visits, or
78 within 30 calendar days, whichever occurs first.”

79 On page seven, by striking out subparagraph 8.2.b.3 in its
80 entirety and inserting in lieu thereof the following:

81 “8.2.b.3. In the event that the supervising physical
82 therapist changes, the new supervising physical therapist
83 must discuss the patient’s diagnosis and plan of care with the
84 previous supervising physical therapist before the next
85 physical therapist assistant visit is made. Either physical
86 therapist must document such communication.”

87 On page 8, by striking out subsection 8.5 in its entirety
88 and inserting in lieu thereof the following:

89 “8.5. In an emergency situation, such as serious illness or
90 injury of the therapist or therapist’s family member or death
91 of a family member, which causes the unanticipated absence
92 of the supervising physical therapist for not more than three
93 consecutive days, and no more than twelve days per calendar
94 year, a licensed physical therapist assistant may continue to
95 render services, under the supervision of another physical
96 therapist, to only those patients for which the licensed
97 physical therapist assistant has previously participated in the
98 intervention for established plans of care not to exceed the
99 regularly scheduled operational hours of the particular day or
100 days the supervising physical therapist is absent. When this
101 provision is utilized, the ratio in subdivision 8.1.c. may be
102 exceeded and the physical therapist shall document the dates
103 and the emergency situation.”

104 On page 8, by striking out subsection 8.6 in its entirety
105 and inserting in lieu thereof the following:

106 “8.6. In a temporary situation, which causes the absence
107 of the supervising physical therapist up to one day, and no
108 more than eighty hours in a calendar year, a licensed physical
109 therapist assistant may continue to render services, under
110 general supervision of the supervising physical therapist, to
111 only those patients for which the licensed physical therapist
112 assistant has previously participated in the intervention for
113 established plans of care not to exceed the regularly
114 scheduled operational hours of the particular day the
115 supervising physical therapist is absent. When this provision
116 is utilized, the level of supervision in subdivision 8.2.a. may
117 be exceeded and the physical therapist shall document the
118 hours, date and temporary situation.”

119 On page 9, by inserting a new section 10 to read as
120 follows:

“§16-1-10. Continuing Education.

1 10.1. A “unit” is one clock hour spent in a continuing
2 education activity unless otherwise defined in this section.

3 10.2. All licensees desiring to remain “active” and in
4 good standing must complete 24 units of Board approved
5 continuing education within the two year licensing period. If
6 the licensee does not complete the 24 units of Board
7 approved continuing education within the license period, that
8 licensee will be placed on delinquent status and will be
9 subject to all fees associated with delinquent status.

10 10.2.a. For those applicants reinstating their license for a
11 period of 6 months or less, only 6 units are required for that
12 year.

13 10.2.b. Volunteer licensees need only to complete twenty
14 (20) units of Board approved continuing education activities
15 within a two year renewal cycle.

16 10.2.c. Accumulated CEU's may not be carried over from
17 one renewal period to another.

18 10.2.d. A new graduate does not need continuing
19 education hours for the current year of graduation.

20 10.3. Completion of examinations, residencies,
21 fellowships, tools, and courses for continuing education
22 credit.

23 10.3.a. A maximum of 8 units per license period can be
24 obtained from any combination of clinical instruction or
25 competency tools.

26 10.3.b. Passing the following specialty examinations will
27 qualify for twenty-four contact hours of continuing education
28 in the year the examination is taken:

29 10.3.b.1 Specialty examinations and recertification
30 administered by the American Board of Physical Therapy
31 Specialties (ABPTS).

32 10.3.b.2. The Hand Therapy Certification Commission
33 (HTCC) certification examination.

34 10.3.b.3. Continuing education course instructors can
35 receive 1 unit per hour of class instruction time will be
36 awarded for board approved continuing education courses in
37 the year the course given. Credit awarded to the instructor
38 for said course will be granted only one time.

39 10.3.c. The successful completion of an American
40 Physical Therapy Association credentialed residency or

41 fellowship program will qualify for twenty-four contact hours
42 of continuing education in the year the residency or
43 fellowship is completed.

44 10.3.d. The successful completion of a practice review
45 tool of the Federation of State Boards of Physical Therapy
46 pertaining to continued competence will qualify for
47 continuing education.

48 10.3.d.1. Eight contact hours of continuing education will
49 be awarded for completion of a practice review tool.

50 10.3.d.2. Licensees may use a practice review tool
51 identified in paragraph 3.d.1 of this section no more than
52 every other renewal period.

53 10.3.e. Clinical instruction.

54 10.3.e.1. Providing clinical instruction to PT or PTA
55 student(s) enrolled in a CAPTE approved physical therapist
56 or physical therapist assistant program can qualify for up to
57 a maximum 8 units per year.

58 10.3.e.2. Four weeks of clinical instruction is equal to 1
59 unit of continuing education.

60 10.3.f. Continuing education courses are subject to board
61 approval.

62 10.3.f.1 One unit per hour of class instruction time will
63 be awarded for board approved continuing education courses
64 in the year the course is taken.

65 10.3.g. One unit per hour of class instruction time shall
66 be awarded and automatically approved for CAPTE
67 College/University, American Physical Therapy Association

68 or West Virginia Physical Therapy Association sponsored
69 continuing education courses in the year the course is taken.

70 10.3.h. One unit per hour of class instructions for CAPTE
71 college or university physical therapy or doctorate physical
72 therapy programs.

73 10.4. The board may grant a waiver of the continuing
74 education requirements in the case of illness, disability or
75 undue hardship.

76 10.4.a. A request for waiver form must be completed in
77 full. In the case of illness or disability, a physician's
78 statement is required.

79 10.4.b. All completed forms must be received by the
80 Board for consideration no later than the first day of October
81 of the year preceding the renewal date.

82 10.4.c. A waiver may be granted for any period of time
83 not to exceed one renewal cycle.

84 10.4.d. In the event that the illness, disability or hardship
85 continues to the next renewal cycle, then a new waiver
86 request is required.

87 10.4.e. Should a waiver be granted due to disability or
88 illness, the section may require the individual to provide
89 appropriate documentation from a physician or another
90 qualified and appropriate practitioner to verify the
91 individual's competency and ability to practice physical
92 therapy in the state of West Virginia prior to the return to
93 active practice of physical therapy in West Virginia."

94 (b) The legislative rule filed in the state register on July
95 30, 2010, authorized under the authority of section six, article
96 twenty, chapter thirty, of this code, relating to the Board of

97 Physical Therapy (fees for physical therapists and physical
98 therapist assistants, 16 CSR 4), is authorized.

99 (c) The legislative rule filed in the state register on July
100 30, 2010, authorized under the authority of section four,
101 article twenty-a, chapter thirty, of this code, modified by the
102 Board of Physical Therapy to meet the objections of the
103 Legislative Rule-Making Review Committee and refiled in
104 the state register on September 20, 2010, relating to the
105 Board of Physical Therapy (general provisions for athletic
106 trainers, 16 CSR 5), is authorized.

107 (d) The legislative rule filed in the state register on July
108 30, 2010, authorized under the authority of section four,
109 article twenty-a, chapter thirty, of this code, modified by the
110 Board of Physical Therapy to meet the objections of the
111 Legislative Rule-Making Review Committee and refiled in
112 the state register on September 20, 2010, relating to the
113 Board of Physical Therapy (fees for athletic trainers, 16 CSR
114 6), is authorized.

§64-9-3. Sanitarians.

1 (a) The legislative rule filed in the state register on July
2 29, 2010, authorized under the authority of section six, article
3 seventeen, chapter thirty, of this code, relating to the of
4 Board of Sanitarians (interim fee schedule, 20 CSR 3), is
5 authorized.

6 (b) The legislative rule filed in the state register on July
7 29, 2010, authorized under the authority of section six, article
8 seventeen, chapter thirty, of this code, relating to the Board
9 of Sanitarians (practice of public health sanitation, 20 CSR
10 4), is authorized, with the following amendments:

11 On page three, following subdivision 4.1.c, by inserting
12 a new subdivision 4.1.d. to read as follows:

13 “4.1.d. Has not previously failed an examination for
14 licensure in this state;”;

15 And,

16 By re-designating the remaining subdivisions
17 accordingly.

§64-9-4. Secretary of State.

1 The legislative rule filed in the state register on
2 November 12, 2010, authorized under the authority of section
3 twelve, article two, chapter three, of this code, relating to the
4 Secretary of State (combined voter registration and driver
5 licensing fund, 153 CSR 25), is authorized with the following
6 amendments:

7 On page one, section two, following the words “For the
8 purposes of this rule:”, by striking out subsection 2.1 in its
9 entirety and renumbering the following subsections of section
10 two;

11 On page three, subdivision 4.2.2 following the words
12 “under this subsection on a”, by striking out the word
13 “quarterly” and inserting in lieu thereof the word “annual”;

14 On page three, subsection 4.3, following the words
15 “collection and transmission of the completed forms:”, by
16 striking out the proviso in its entirety, and inserting in lieu
17 thereof the following proviso “*Provided*, That the total
18 reimbursement shall not exceed sixty (60) percent of the total
19 annual revenue of the Fund. In any year in which the revenue
20 is insufficient to pay the reimbursement rate of \$1.00 per
21 completed registration as provided in this subsection, the
22 amount per registration application shall be reduced
23 proportionally.”;

24 And,

25 On page four, by striking out subsection 4.4 and
26 subdivisions 4.4.1, 4.4.2, 4.4.3 and 4.4.4 in their entirety and
27 renumbering the remaining sections of the rule.

§64-9-5. Board of Barbers and Cosmetologists.

1 (a) The legislative rule filed in the state register on July
2 30, 2010, authorized under the authority of section six, article
3 twenty-seven, chapter thirty, of this code, modified by the
4 Board of Barbers and Cosmetologists to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the state register on October 18, 2010, relating to
7 the Board of Barbers and Cosmetologists (procedures,
8 criteria and curricula for examinations and licensure of
9 barbers, cosmetologists, manicurists and aestheticians, 3 CSR
10 1), is authorized with the following amendments:

11 On page two, by striking out the words "43.1" and
12 inserting in lieu thereof the word "3.1.";

13 And,

14 On page three, subsection 4.2, after the word "obtain" by
15 inserting the word "a".

16 (b) The legislative rule filed in the state register on July
17 30, 2010, authorized under the authority of section six, article
18 twenty-seven, chapter thirty, of this code, modified by the
19 Board of Barbers and Cosmetologists to meet the objections
20 of the Legislative Rule-Making Review Committee and
21 refiled in the state register on October 18, 2010, relating to
22 the Board of Barbers and Cosmetologists (qualifications,
23 training, examination of licensure of instructors, 3 CSR 2), is
24 authorized, with the following amendments:

25 On page one, by striking out subdivision 2.1.1 in its
26 entirety and inserting in lieu thereof the following:

27 “2.1.1 Have been licensed 5 years with 5 years of
28 salon/shop experience.”;

29 On page one, subdivision 2.1.6 by striking out the
30 percentage amount “70%” and inserting in lieu thereof the
31 percentage amount “80%”;

32 And,

33 On page one, by striking out all of subdivisions 2.1.7. and
34 2.1.8. and inserting in lieu new subdivisions 2.1.7. and 2.1.8.
35 to read as follows:

36 “2.1.7. Submit an application to the board;

37 2.1.8. Pay applicable certification, examination and
38 registration fees.”

39 (c) The legislative rule filed in the state register on July
40 30, 2010, authorized under the authority of section six, article
41 twenty-seven, chapter thirty, of this code, modified by the
42 Board of Barbers and Cosmetologists to meet the objections
43 of the Legislative Rule-Making Review Committee and
44 refiled in the state register on October 18, 2010, relating to
45 the Board of Barbers and Cosmetologists (operational
46 standards for schools of barbering and beauty culture, 3 CSR
47 4), is authorized with the following amendments:

48 On page five, by striking out section caption “3-4-5.
49 Enrollment” and inserting in lieu thereof a new section
50 caption to read as follows:

51 “§3-4-5. Enrollment”;

52 And,

53 On page six, by striking out the section caption “3-4-8.
54 Teaching Staff” and inserting in lieu thereof a new section
55 caption to read as follows:

56 “§3-4-8 Teaching Staff”.

57 (d) The legislative rule filed in the state register on June
58 18, 2010, authorized under the authority of section six, article
59 twenty-seven, chapter thirty, of this code, relating to the
60 Board of Barbers and Cosmetologists (schedule of fees, 3
61 CSR 6), is authorized with the following amendment:

62 On page one, subsection 2.1, by striking out the words
63 “\$99.00” and inserting in lieu thereof the words “Based on
64 the National Interstate Council Index with a cap of \$107.00”.

§64-9-6. Commissioner of Agriculture.

1 (a) The legislative rule filed in the state register on July
2 26, 2010, authorized under the authority of section four,
3 article thirteen, chapter nineteen, of this code, modified by
4 the Commissioner of Agriculture to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled
6 in the state register on September 21, 2010, relating to the
7 Commissioner of Agriculture (West Virginia Apiary Rule, 61
8 CSR 2), is authorized.

9 (b) The legislative rule filed in the state register on July
10 12, 2010, authorized under the authority of section five-c,
11 article twelve, chapter twenty-two, of this code, relating to
12 the Commissioner of Agriculture (general groundwater
13 protection rules for fertilizers and manures, 61 CSR 6C), is
14 authorized.

15 (c) The legislative rule filed in the state register on the
16 July 20, 2010, authorized under the authority of section three,
17 article two-B, chapter nineteen, of this code, relating to the
18 Commissioner of Agriculture (inspection of meat and
19 poultry, 61 CSR 16), is authorized.

§64-9-7. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the state register on July
2 27, 2010, authorized under the authority of section six, article
3 ten, chapter thirty, of this code, modified by the West
4 Virginia, 1931, as amended, relating to authorizing the Board
5 of Veterinary Medicine to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the state register on November 24, 2010, relating to the West
8 Virginia, 1931, as amended, relating to the Board of
9 Veterinary Medicine (organization and operation and
10 licensing of veterinarians, 26 CSR 1), is authorized with the
11 following amendments:

12 On page two, subdivision 2.4.4, by striking out the
13 subdivision in its entirety;

14 On page twelve, subsection 8.1, by striking out the words
15 “the supervision of a West Virginia licensed veterinarian”
16 and inserting in lieu thereof the words “the indirect or general
17 supervision of a West Virginia licensed supervising
18 veterinarian. During the period of supervision of a temporary
19 permittee, the supervising veterinarian must remain within
20 one hour’s physical access to the location where the
21 temporary permittee is rendering veterinary care.”

22 And,

23 On page twelve, subsection 8.2, in the last sentence of the
24 subsection, by striking out the word “supervisory” and
25 inserting in lieu thereof the word “supervising”.

26 (b) The legislative rule filed in the state register on July
27 27, 2010, authorized under the authority of section six, article
28 ten, chapter thirty of this code, modified by the Board of
29 Veterinary Medicine to meet the objections of the Legislative
30 Rule-Making Review Committee and refiled in the state
31 register on November 24, 2010, relating to the Board of
32 Veterinary Medicine (registration of veterinary technicians,
33 26 CSR 3), is authorized.

34 (c) The legislative rule filed in the state register on July
35 27, 2010, authorized under the authority of section six, article
36 ten, chapter thirty of this code, modified by the Board of
37 Veterinary Medicine to meet the objections of the Legislative
38 Rule-Making Review Committee and refiled in the state
39 register on November 24, 2010, relating to the Board of
40 Veterinary Medicine (standards of practice, 26 CSR 4), is
41 authorized, with the following amendments:

42 On page four, subsection 3.6, in the title to the
43 subsection, by striking out the words “position or trust” and
44 inserting in lieu thereof the words “position of trust”.

45 (d) The legislative rule filed in the state register on July
46 27, 2010, authorized under the authority of section six, article
47 ten, chapter thirty of this code, modified by the Board of
48 Veterinary Medicine to meet the objections of the Legislative
49 Rule-Making Review Committee and refiled in the state
50 register on November 24, 2010, relating to the Board of
51 Veterinary Medicine (certified animal euthanasia technicians,
52 26 CSR 5), is authorized, with the following amendment:

53 On page eight, subdivision 10.1.d., by striking out the
54 words “Section 10” and inserting in lieu thereof the words
55 “Section 13”.

56 (e) The legislative rule filed in the state register on July
57 27, 2010, authorized under the authority of section six, article

58 ten, chapter thirty of this code, modified by the Board of
59 Veterinary Medicine to meet the objections of the Legislative
60 Rule-Making Review Committee and refiled in the state
61 register on November 24, 2010, relating to the Board of
62 Veterinary Medicine (schedule of fees, 26 CSR 6), is
63 authorized.

§64-9-8. Board of Optometry.

1 (a) The legislative rule filed in the state register on July
2 30, 2010, authorized under the authority of section six, article
3 eight, chapter thirty, of this code, modified by the Board of
4 Optometry to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the state register on
6 November 24, 2010, relating to the Board of Optometry
7 (rules of the West Virginia Board of Optometry, 14 CSR 1),
8 is authorized.

9 (b) The legislative rule filed in the state register on July
10 30, 2010, authorized under the authority of section six, article
11 eight, chapter thirty, of this code, modified by the Board of
12 Optometry to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the state register on
14 January 3, 2011, relating to the Board of Optometry (oral
15 pharmaceutical prescriptive authority, 14 CSR 2), is
16 authorized.

17 (c) The legislative rule filed in the state register on July
18 30, 2010, authorized under the authority of section six, article
19 eight, chapter thirty, of this code, modified by the Board of
20 Optometry to meet the objections of the Legislative Rule-
21 Making Review Committee and refiled in the state register on
22 November 24, 2010, relating to the Board of Optometry
23 (schedule of fees, 14 CSR 5), is authorized.

24 (d) The legislative rule filed in the state register on July
25 30, 2010, authorized under the authority of section six, article

26 eight, chapter thirty, of this code, modified by the Board of
27 Optometry to meet the objections of the Legislative Rule-
28 Making Review Committee and refiled in the state register on
29 November 24, 2010, relating to the Board of Optometry
30 (examination and scoring policy, 14 CSR 6), is authorized
31 with the following amendments:

32 On page one, subsection 2.1., by striking out all of
33 subsection 2.1. and inserting in lieu thereof a new subsection
34 2.1. to read as follows:

35 “2.1. The Board shall conduct the interview with a
36 quorum of the Board being present.”;

37 On page one, subsection 3.2, after the word “The” by
38 inserting the word “Board”;

39 And,

40 On page two, subsection 4.1., by striking out all of
41 subsection 4.1. and inserting a new subsection 4.1. to read as
42 follows:

43 “4.1. A Board quorum may evaluate the applicant’s
44 successful or unsuccessful completion of the interview by
45 consensus.”

46 (e) The legislative rule filed in the state register on July
47 30, 2010, authorized under the authority of section six, article
48 eight, chapter thirty, of this code, modified by the Board of
49 Optometry to meet the objections of the Legislative Rule-
50 Making Review Committee and refiled in the state register on
51 November 24, 2010, relating to the Board of Optometry
52 (licensure by endorsement, 14 CSR 8), is authorized with the
53 following amendments:

54 On page one, after subdivision 2.2.5., by inserting a new
55 subdivision 2.2.6. to read as follows:

56 “2.2.6. At the option of the Board, an applicant for
57 licensure by reciprocity may be required to take the National
58 Board Examination;

59 On page one, subsection 3.2., by striking out the word
60 “licensee” and inserting in lieu thereof the word “applicant”;

61 On page two, subsection 3.7, by striking out the word
62 “person” and inserting in lieu thereof the word “applicant”;

63 On page two, subsection 3.8, after the words “Code of”,
64 by inserting the word “State”;

65 And,

66 On page two, subsection 3.9., by striking out all of
67 subsection 3.9. and inserting in lieu thereof a new subsection
68 3.9. to read as follows:

69 “3.9. The Board may require an applicant to interview
70 with the Board.”

71 (f) The legislative rule filed in the state register on July
72 30, 2010, authorized under the authority of section six, article
73 eight, chapter thirty, of this code, modified by the Board of
74 Optometry to meet the objections of the Legislative Rule-
75 Making Review Committee and refiled in the state register on
76 November 24, 2010, relating to the Board of Optometry
77 (contact lenses that contain and deliver pharmaceutical agents
78 certificates, 14 CSR 9), is authorized with the following
79 amendment:

80 On page one, subsection 3.3., after the words “Code of”,
81 by inserting the word “State”.

82 (g) The legislative rule filed in the state register on July
83 30, 2010, authorized under the authority of section six, article

84 eight, chapter thirty, of this code, modified by the Board of
85 Optometry to meet the objections of the Legislative Rule-
86 Making Review Committee and refiled in the state register on
87 November 24, 2010, relating to the Board of Optometry
88 (continuing education, 14 CSR 10), is authorized with the
89 following amendments:

90 On page one, subsection 2.1., after the words “Code of”
91 by inserting the word “State”;

92 On page one, subsection 3.2., after the word “hours” by
93 inserting the words “of continuing education”;

94 On page one, subsection 3.6., after the word “outlined”
95 by inserting the word “in”;

96 On page one, subsection 3.7., by striking out the word
97 “hold” and inserting in lieu thereof the word “holds”;

98 On page two, subdivision 4.1(d), by striking out the word
99 “Postgraduate” and inserting in lieu thereof the word
100 “postgraduate”;

101 On page two, subsection 5.1., after the words “Code of”
102 by inserting the word “State”;

103 On page two, subsection 6.1., after the word “instruction”
104 by striking out the words “by correspondence, Internet or
105 other electronic means”;

106 And,

107 On page two, subsection 6.1, after the word “attendance”
108 by changing the period to a comma and inserting the words
109 “by correspondence, Internet or other electronic means.”

110 (h) The legislative rule filed in the state register on July
111 30, 2010, authorized under the authority of section fifteen,

112 article eight, chapter thirty, of this code, modified by the
113 Board of Optometry to meet the objections of the Legislative
114 Rule-Making Review Committee and refiled in the state
115 register on December 23, 2010, relating to the Board of
116 Optometry (injectable pharmaceutical agents certificate, 14
117 CSR 11), is authorized with the following amendments:

118 On page five, subsection 10.1., by striking out the word
119 'not';

120 And,

121 On page five, by striking out subsection 11.1 in its
122 entirety and inserting in lieu thereof the following:

123 “11.1 A certificate holder may not establish a pharmacy in
124 an optometric office or sell injectable pharmaceutical agents
125 prescribed in treatment unless there is a licensed pharmacist on
126 staff or present when the prescription is filled. Nothing in this
127 rule shall prohibit the optometrist from charging a usual and
128 customary fee for performing the injection.

129 11.2 Retrobulbar and Peribulbar injections are
130 prohibited.

131 11.3. The board shall establish a formulary of
132 pharmaceutical agents to be administered by injection.

133 11.3.1. The injection formulary shall be created from
134 those agents that certificate holders have been authorized
135 previously to administer or prescribe as topical agents or oral
136 medication categories listed in the oral formulary of the
137 Board in the W.Va. Code of State Rules, §14-2-7.2a through
138 §14-2-7.2g.

139 11.3.2. New drugs or drug indications may be added to
140 the formulary by a decision of the Board based on any of the
141 following criteria:

142 11.3.2.1. A new or existing drug has been approved by
143 the Food and Drug Administration for the treatment of the
144 eye or its appendages.

145 11.3.2.2. A new drug or new drug indication has gained
146 accepted use in the eye care field. Such acceptance may be
147 indicated by its inclusion in the curriculum of an optometry
148 school accredited by the Accreditation Council on
149 Optometric Education or its successor approved by the U.S.
150 Department of Education or approved post-graduate
151 continuing education, through peer-reviewed, evidence-based
152 research and professional journal articles, or by inclusion in
153 established standards of practice and care published by
154 professional organizations.

§64-9-9. Board of Osteopathy.

1 (a) The legislative rule filed in the state register on July
2 30, 2010, authorized under the authority of section one,
3 article fourteen-a, chapter thirty, of this code, modified by the
4 Board of Osteopathy to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the state
6 register on November 29, 2010, relating to the Board of
7 Osteopathy (osteopathic physician assistants, 24 CSR 2), is
8 authorized with the following the following amendments:

9 On page nine, subsection 6.6., after the words “Board and
10 the”, by striking out the word “board” and inserting in lieu
11 thereof the word “Board”;

12 And,

13 On page eleven, subsection 8.6., after the words “and
14 expire with, the”, by inserting the word “osteopathic”.

15 (b) The legislative rule filed in the state register on July
16 28, 2010, authorized under the authority of section three,

17 article fourteen-a, chapter thirty, of this code, modified by the
18 Board of Osteopathy to meet the objections of the Legislative
19 Rule-Making Review Committee and refiled in the state
20 register on November 29, 2010, relating to the Board of
21 Osteopathy (fees for services rendered by the Board, 24 CSR
22 5), is authorized.

§64-9-10. Treasurer's Office.

1 The legislative rule filed in the state register on July 30,
2 2010, authorized under the authority of section two, article
3 two, chapter twelve, of this code, modified by the Treasurer's
4 Office to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the state register on July
6 30, 2010, relating to the Treasurer's Office (establishment of
7 imprest funds, 112 CSR 3), is authorized.

§64-9-11. State Election Commission.

1 The legislative rule filed in the state register on the July
2 29, 2010, authorized under the authority of section fourteen,
3 article twelve, chapter three, of this code, modified by the
4 State Election Commission to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the state register on January 14, 2011, relating to the State
7 Election Commission (West Virginia Supreme Court of
8 Appeals Public Campaign Financing Pilot Program, 146 CSR
9 5), is authorized, with the following amendment:

10 On page nine, subdivision 6.9.a., by striking out "per W.
11 Va. Code §3-12-9(f)" and inserting in lieu thereof "as
12 required by W. Va. Code §3-12-9(g)".

CHAPTER 115

**(Com. Sub. for H. B. 2626 - By Delegates
Brown, D. Poling, Fleischauer and Talbott)**

[Passed March 9, 2011; in effect from passage.]
[Approved by the Governor on March 18, 2011.]

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; authorizing the Workforce West Virginia to promulgate a legislative rule related to the employer violator system, (96 CSR 3); authorizing the Division of Natural Resources to promulgate legislative rules relating to special motorboating regulations, (58 CSR 27), prohibitions when hunting and trapping, (58 CSR 47), and general hunting, (58 CSR 49); authorizing the Division of Labor to promulgate legislative rules relating to the Elevator Safety Act, (42 CSR 21), supervision of elevator mechanics and apprentices, (42

CSR 21A), the Crane Operator Certification Act, (42 CSR 24), and the Crane Operator Certification Act - practical examination, (42 CSR 25).

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. Workforce West Virginia.

1 The legislative rule filed in the state register on the
2 twenty-fourth day of September, two thousand nine,
3 authorized under the authority of section four, article one,
4 chapter twenty-one-a, of this code, modified by Workforce
5 West Virginia to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the eighteenth day of October, two thousand ten, relating
8 to Workforce West Virginia (employer violator system, 96
9 CSR 3), is authorized.

§64-10-2. Division of Natural Resources.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of June, two thousand ten, authorized under
3 the authority of section twenty-three, article seven, chapter
4 twenty, of this code, modified by the Division of Natural
5 Resources to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twenty-eighth day of July, two thousand ten, relating
8 to the Division of Natural Resources (special motorboating
9 regulations, 58 CSR 27), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-second day of July, two thousand ten, authorized under

12 the authority of section seven, article one, chapter twenty, of this
13 code, relating to the Division of Natural Resources (prohibitions
14 when hunting and trapping, 58 CSR 47), is authorized.

15 (c) The legislative rule filed in the state register on the
16 twenty-second day of July, two thousand ten, authorized
17 under the authority of section seven, article one, chapter
18 twenty, of this code, relating to the Division of Natural
19 Resources (general hunting, 58 CSR 49), is authorized.

§64-10-3. Division of Labor.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, two thousand ten, authorized under the
3 authority of section eleven, article three-c, chapter twenty-
4 one, of this code, modified by the Division of Labor to meet
5 the objections of the Legislative Rule-Making Review
6 Committee and refiled in the state register on the twenty-third
7 day of September, two thousand ten, relating to the Division
8 of Labor (Elevator Safety Act, 42 CSR 21), is authorized.

9 (b) The legislative rule filed in the state register on the
10 thirtieth day of July, two thousand ten, authorized under the
11 authority of section eleven, article three-c, chapter twenty-
12 one, of this code, modified by the Division of Labor to meet
13 the objections of the Legislative Rule-Making Review
14 Committee and refiled in the state register on the twenty-third
15 day of September, two thousand ten, relating to the Division
16 of Labor (supervision of elevator mechanics and apprentices,
17 42 CSR 21A), is authorized.

18 (c) The legislative rule filed in the state register on the
19 twenty-third day of July, two thousand ten, authorized under
20 the authority of section three, article three-d, chapter twenty-
21 one, of this code, modified by the Division of Labor to meet
22 the objections of the Legislative Rule-Making Review
23 Committee and refiled in the state register on the twenty-third
24 day of September, two thousand ten, relating to the Division

25 of Labor (Crane Operator Certification Act, 42 CSR 24), is
26 authorized with the following amendment:

27 On page five, subdivision 5.5(a) after the words “as
28 required by”, by striking the words “paragraph 4.5.1(f)” and
29 inserting in lieu thereof the words “subdivision 5.1(f)”;

30 And,

31 On page eight, subsection 7.3, by striking out “25-5” and
32 inserting in lieu thereof “25-4”.

33 (d) The legislative rule filed in the state register on the
34 twenty-third day of July, two thousand ten, authorized under
35 the authority of section three, article three-d, chapter twenty-
36 one, of this code, modified by the Division of Labor to meet
37 the objections of the Legislative Rule-Making Review
38 Committee and refiled in the state register on the twenty-third
39 day of September, two thousand ten, relating to the Division
40 of Labor (Crane Operator Certification Act - practical
41 examination, 42 CSR 25), is authorized.

CHAPTER 116

**(Com. Sub. for H. B. 3105 - By Delegates
Lawrence, Smith, Ellem, Ferro, Pino,
M. Poling and D. Campbell)**

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §55-7-26, relating

to immunity from civil and criminal liability for first responders who use forced entry in response to a 911 call.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-26, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-26. First responders who use forced entry in response to 911 call; limited immunity from civil and criminal liability.

1 (a) “First responder” includes: law-enforcement officers,
2 firefighters, emergency medical services personnel and others
3 that respond to calls for emergency medical assistance.

4 (b) Neither a first responder nor his or her supervisor,
5 agency, employer or supervising entity is liable for any civil
6 damages or criminal liability resulting from a forcible entry
7 of a home, business or other structure if the first responder:

8 (1) Is responding to a documented 911 call for emergency
9 medical assistance;

10 (2) Has made reasonable efforts to summon an occupant
11 of the home, business, or structure by knocking or otherwise
12 notifying the occupant(s) of his or her presence;

13 (3) Has not received a response from an occupant within
14 a reasonable period of time; and

15 (4) Has a good faith belief that it is necessary to make a
16 forcible entry for the purposes of rendering emergency
17 medical assistance or preventing imminent bodily harm.

18 (c) Nothing in this section shall affect the standard of care
19 a first responder must employ when rendering aid after
20 gaining entry.

CHAPTER 117

**(Com. Sub. for S. B. 458 - By Senators
Laird, Fanning, D. Facemire,
Williams, McCabe and Plymale)**

[Amended and again passed, in an effort to meet the objections of
the Governor, March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, all relating to updating the Logging Sediment Control Act; increasing licensure and certification fees; requiring the Division of Forestry to report certain information to the Tax Commissioner on a monthly basis; requiring the Director of the Division of Forestry to notify the Director of the Division of Water and Waste Management of the Department of Environmental Protection of licensure suspension or revocation within thirty days; modifying licensure and certification renewal and application procedures; revising certification training requirements; permitting the director the discretion to immediately suspend a timbering operator or operation, or any part of a timbering operation, in any part of the state; and requiring the Director of the Division of Forestry to convene a committee to review best management practices every five years.

Be it enacted by the Legislature of West Virginia:

That §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1B. SEDIMENT CONTROL DURING
COMMERCIAL TIMBER
HARVESTING OPERATIONS.**

§19-1B-3. Definitions.

1 (a) “Best management practices” means sediment control
2 measures, structural or nonstructural, used singly or in
3 combination, to reduce soil runoff from land disturbances
4 associated with commercial timber harvesting.

5 (b) “Chief” means the Director of the Division of Water
6 and Waste Management of the Department of
7 Environmental Protection, or his or her designee.

8 (c) “Director” means the Director of the Division of
9 Forestry of the Department of Commerce or his or her
10 designee.

11 (d) “Operator” means any person who conducts
12 timbering operations.

13 (e) “Timbering operation,” or the plural, means activities
14 directly related to the severing or removal of standing trees
15 from the forest as a raw material for commercial processes
16 or purposes. For the purpose of this article, timbering
17 operations do not include the severing of evergreens grown
18 for and severed for the traditional Christmas holiday season;
19 the severing of trees incidental to ground-disturbing
20 construction activities, including well sites, access roads and
21 gathering lines for oil and natural gas operations; the
22 severing of trees for maintaining existing, or during
23 construction of, rights-of-way for public highways or public

24 utilities or any company subject to the jurisdiction of the
25 Federal Energy Regulatory Commission unless the trees so
26 severed are being sold or provided as raw material for
27 commercial wood product purposes; or the severing of trees
28 by an individual on the individual's own property for his or
29 her individual use provided that the individual does not have
30 the severing done by a person whose business is the
31 severing or removal of trees.

32 (f) "Sediment" means solid particulate matter, usually
33 soil or minute rock fragments, moved by wind, rainfall or
34 snowmelt into the streams of the state.

**§19-1B-4. Timbering license required; requirement for
license; exemption; annual fee; rules.**

1 (a) A person may not conduct timbering operations,
2 purchase timber or buy logs for resale until he or she has
3 obtained a license and met the requirements of this article.

4 (b) *Exemptions.*— A person who severs or removes, or
5 hires or contracts with another to sever or remove, standing
6 trees from his or her own land is exempted from the
7 timbering operations licensure requirement of this section
8 during any calendar year in which all trees severed or
9 removed by or for this owner have an aggregate stumpage
10 value that does not exceed \$15,528. A person hired or
11 contracted to sever or remove standing trees from the land
12 of another is exempted from the timbering operations
13 licensure requirement of this section during any calendar
14 year in which all trees severed or removed by the hired or
15 contracted person have an aggregate stumpage value that
16 does not exceed \$15,528.

17 (c) An applicant for a timbering operation license shall
18 submit an application and the fee of \$150 for each biennial

19 renewal of the license. The application shall contain the
20 following information:

21 (1) Name, address and telephone number of the
22 applicant and if the applicant is a business entity other than
23 a sole proprietor, the names and addresses of the principals,
24 officers and resident agent of the business entity;

25 (2) The applicant's West Virginia business registration
26 number or a copy of the current West Virginia business
27 registration certificate. The Division of Forestry shall
28 submit this information and a list of all applicants to the Tax
29 Commissioner each month of the calendar year to ensure
30 compliance with payment of severance, income withholding
31 and all other applicable state taxes; and

32 (3) Any other information as required by the director.

33 (d) The director shall propose rules for legislative
34 approval pursuant to the provisions of article three, chapter
35 twenty-nine-a of this code, regarding the acquisition,
36 suspension and revocation a license under this article. The
37 rules are the proper subject of emergency legislative rules that
38 may be promulgated in accordance with the provision of
39 section fifteen, article three, section twenty-nine-a of this
40 code.

41 (e) The director shall prescribe a form providing the
42 contents and manner of posting notice at the timbering
43 operation. The notice shall include, at a minimum, the
44 operator's name and license number.

**§19-1B-5. Compliance orders; suspension of timbering
operation license.**

1 (a) Upon a finding by the chief that failure to use a
2 particular best management practice is causing or
3 contributing, or has the potential to cause or contribute, to

4 soil erosion or water pollution, the chief shall notify the
5 director of the location of the site, the problem associated
6 with the site, and any suggested corrective action. Upon the
7 failure of the director to take appropriate action within three
8 days of providing notice to the director, the chief may seek
9 relief through the conference panel in accordance with
10 section eleven of this article.

11 (b) Upon notification of the chief or upon a finding by
12 the director that failure to use a particular best management
13 practice is causing or contributing, or has the potential to
14 cause or contribute, to soil erosion or water pollution, the
15 director shall issue a written compliance order requiring the
16 person conducting the timbering operation to take corrective
17 action. The order shall mandate compliance within a
18 reasonable and practical time not to exceed ten days. The
19 person subject to the order may appeal the order within
20 forty-eight hours of its issuance to the conference panel in
21 accordance with section eleven of this article.

22 (c) The director has the discretion to immediately
23 suspend a timbering operator or operation, or any part of a
24 timbering operation, in any part of the state if:

25 (1) The director believes that the observed damage or
26 circumstances on a timbering operation are sufficient to
27 endanger life or result in uncorrectable soil erosion or water
28 pollution, or if the;

29 (2) The operator is not licensed pursuant to this article;
30 or

31 (3) A certified logger is not supervising the timbering
32 operation.

33 (d) The timbering operation, the operator, or both shall
34 remain suspended until the corrective action mandated in the

35 compliance order is instituted. The director shall not lift the
36 suspension until compliance is satisfactory or until overruled
37 on appeal. Failure to comply with any compliance order is
38 a violation of this article. The timbering operator or
39 operation subject to the compliance order may appeal to the
40 conference panel in accordance with the provisions of
41 section eleven of this article.

42 (e) For a second violation within any two-year period, the
43 director may suspend the license of any operator conducting
44 a timbering operation or the certification of any certified
45 logger supervising a timbering operation for no less than
46 thirty nor more than ninety days if the person is found in
47 violation of this article or article eleven, chapter twenty-two
48 of this code. One or more violations for the same incident is
49 only one violation for purposes of this subsection.

50 (f) For a third violation within any two-year period, the
51 director may revoke the license of any operator conducting
52 timbering operations or the certification of any certified
53 logger if the person is found in violation of this article or
54 article eleven, chapter twenty-two of this code. One or more
55 violations for the same incident is only one violation for
56 purposes of this subsection. A revoked license is not subject
57 to reissue during the current licensing period.

58 (g) The director shall notify the chief of any order issued
59 or any suspension or revocation of a license pursuant to this
60 section within thirty days of the director's action.

**§19-1B-7. Certification of persons supervising timbering
operations; timbering operations to be
supervised; promulgation of rules.**

1 (a) Any individual supervising any licensed timbering
2 operation, or any individual supervising any timbering
3 operation that is not exempted from the licensing
4 requirements set forth in section four of this article, must be
5 certified pursuant to this section.

6 (b) The director is responsible for the development of
7 standards and criteria for education, training and
8 examination that must be successfully completed for persons
9 to be certified to supervise any timbering operation. The
10 certified logger shall attend a training program every four
11 years after certification. The program for certified loggers
12 shall provide for education and training in the safe conduct
13 of timbering operations, in first aid procedures and in the
14 use of best management practices to prevent soil erosion on
15 timbering operations. The goals of this program will be to
16 assure that timbering operations are conducted in
17 accordance with applicable state and federal safety
18 regulations in a manner that is environmentally sound and
19 safe.

20 (c) The director shall provide programs using the
21 resources of the division, other appropriate state agencies,
22 educational entities and other qualified persons. Each
23 inspector under the jurisdiction of the chief shall attend a
24 certification program free of charge and complete the
25 certification requirements of this section.

26 (d) The director shall propose rules for legislative
27 approval in accordance with article three, chapter twenty-
28 nine-a of this code, to effectuate the purposes of this article.

29 (e) Upon a person's successful completion of the
30 certification requirements, the director shall provide proof
31 of the completion by issuing a numbered certificate and a
32 wallet-sized card to that person. The division shall maintain
33 a record of each certificate issued and the person to whom
34 it was issued.

35 (f) The certified logger shall submit a fee of \$150 for the
36 initial certification application and the renewal application
37 every two years thereafter.

38 (g) Every timbering operation that is required to be
39 licensed under section four of this article must have at least
40 one person certified pursuant to this section supervising the
41 operation at any time the timbering operation is being
42 conducted. All timbering operators shall be guided by the
43 West Virginia forest practice standards and the West
44 Virginia silvicultural best management practices to reduce
45 sediment movement during a timber operation.

46 (h) The director shall, at no more than five-year
47 intervals, convene a committee to review the best
48 management practices to ensure that they reflect and
49 incorporate the most current technologies. The committee
50 shall, at a minimum, include a person researching
51 silvicultural best management practices, a person in the field
52 of silviculture, two loggers certified under this article, a
53 representative of the Division of Water and Waste
54 Management of the Department of Environmental Protection
55 and a representative of an environmental organization. The
56 director shall chair the committee and may amend the best
57 management practices according to the suggestions of the
58 committee for the next certification cycle.

§19-1B-11. Creation of conference panels; authority.

1 (a) Each forestry region in this state shall contain an
2 informal conference panel composed of three persons to
3 decide appeals of the director's orders. One member of the
4 panel shall be selected by the director, one member shall be
5 selected by the chief and one member shall be selected by
6 agreement between the chief and the director. If a vacancy
7 exists on the panel, the vacancy shall be filled by whomever
8 made the initial selection. The members of the panel shall
9 serve without compensation.

10 (b) Upon appeal of a decision under this section or upon
11 petition by the chief, pursuant to the provisions of

12 subsection (a), section five of this article, the panel shall
13 hold an informal conference affirming, modifying or
14 vacating an order of the director, or issuing an order in the
15 name of the director. The panel shall forthwith notify the
16 parties of its decision and as soon as practicable send written
17 notice of its decision to the parties. The decision of the
18 panel is final.

19 (c) A party aggrieved by a decision of a panel may
20 appeal to the circuit court of the county wherein the cause
21 for the order arose. The appeal must be filed with the circuit
22 court within twenty days of the date of decision of the panel
23 and shall be heard de novo by the court. The court may
24 reverse, vacate or modify the decision of the panel. The
25 decision of the circuit court is final unless reversed, vacated
26 or modified on appeal to the Supreme Court of Appeals in
27 the manner provided by law.

§19-1B-12a. Criminal penalties.

1 (a) A person who knowingly or willingly commits one
2 of the following violations is guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not less than \$250
4 and not more than \$500 for each violation:

5 (1) Conducts timbering operations or purchases timber
6 or buys logs for resale in this state without holding a valid
7 license from the Director of the Division of Forestry, as
8 required by section four of this article;

9 (2) Conducts timbering operations or severs trees for
10 sale at a location in this state, without providing the Director
11 of the Division of Forestry with notice of the location where
12 the timbering or harvesting operations are to be conducted,
13 as required by section six of this article;

14 (3) Conducts a timbering operation in this state that is
15 not supervised by a certified logger who holds a valid
16 certificate from the Director of the Division of Forestry, as
17 required by section seven of this article; or

18 (4) Continues to conduct timbering operations in
19 violation of an existing suspension or revocation order that
20 has been issued by the Director of the Division of Forestry
21 or a conference panel under sections five, ten or eleven of
22 this article.

23 (b) For the purposes of this section, each day that a
24 person conducts timbering operations in this state without a
25 license as required by this article, without the supervision of
26 a certified logger as required by this article, without
27 providing notice of the location to the director as required
28 by this article, or in violation of an outstanding suspension
29 or revocation order shall constitute a separate offense.

30 (c) In addition to any other law-enforcement agencies
31 that have jurisdiction over criminal violations, any forester
32 or forest technician employed by the Division of Forestry,
33 who, as a part of his or her official duties is authorized by
34 the Director of the Division of Forestry to inspect timbering
35 operations, is authorized to issue citations for any of the
36 listed violations in this article that he or she has witnessed.
37 The limited authority granted to employees of the Division
38 of Forestry to issue citations to enforce the provisions of this
39 section does not include the power to place any individual
40 or person under arrest.